City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final

Budget and Finance Committee

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

Monday, April 25, 2022 | **1:00 PM** | **Council Chambers, Room 300**

Call to Order

ROLL CALL

PRESENTATION

Budget Policy Direction Motion

AGENDA

1. 202201032 MOTION, submitted by Councilmembers Landsman, Harris, Cramerding, Owens, Johnson, Jeffreys, Parks and Vice Mayor Kearney, WE MOVE that the City administration prepare a Fiscal Year 2023 Recommended General Fund Operating Budget which respects the following policy guidelines and priorities: 1. The Fiscal Year 2023 General Fund Operating Budget must be balanced. While continuing to strive to have a structurally balanced budget, the fiscal impacts of ongoing State cuts to the Local Government Fund, and revenue losses stemming from the pandemic, the use of one-time sources must be used to balance in Fiscal Year 2023.

Sponsors: Landsman, Harris, Cramerding, Owens, Johnson, Jeffreys, Parks and Kearney

Attachments: Motion

2. 202200963 REPORT, dated 4/20/2022, submitted by John P. Curp, Interim City Manager, regarding Department of Finance Report for the Month Ended February 28, 2022

Sponsors: City Manager

Attachments: Transmittal

Attachments

3. 202201020 ORDINANCE submitted by John P. Curp, Interim City Manager, on 4/20/2022, AUTHORIZING the City Manager to execute a Property Exchange Agreement with Experimental Holdings, Inc. for the exchange of real property generally located between Walworth Avenue and Columbia Parkway in the Columbia Tusculum neighborhood.

Sponsors: City Manager

Attachments: Transmittal

Ordinance

Attachment

4. 202201021 ORDINANCE submitted by John P. Curp, Interim City Manager, on 4/20/2022, Authorizing the City manager to execute a Lease Agreement with Mutual Dance Theatre and Arts Centers pursuant to which Mutual Dance Theatre and Arts Centers will lease the College Hill Town Hall located at 1805 Larch Avenue in the College Hill neighborhood for up to 10 years.

Sponsors: City Manager

Attachments: Transmittal

Ordinance

Attachment

5. 202201033 ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 4/20/2022, PROVIDING for the issuance of bonds, or notes in anticipation of such bonds, by the City of Cincinnati, Ohio in the principal amount of not to exceed $10,255,000 for the purpose of financing energy conservation measures.

Sponsors: City Manager

Attachments: Transmittal

Ordinance

6. 202201040 ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 4/20/2022, ESTABLISHING new capital improvement program project account no. 980x255x222534, “City Facility Lighting and Solar Improvements,” for the purpose of providing resources to install LED lighting, solar, and roofing improvements at City facilities; AUTHORIZING the transfer and appropriation the sum of $10,255,000 from the unappropriated surplus of Energy Conservation Bonds Fund 817 to newly established capital improvement program project account no. 980x255x222534, “City Facility Lighting and Solar Improvements”; and AUTHORIZING the City Manager to enter into an agreement with McKinstry Essention, LLC to provide LED lighting, solar, and roofing improvements at City facilities.

Sponsors: City Manager

Attachments: Transmittal

Ordinance

7. 202200613 ORDINANCE (EMERGENCY) submitted by John P. Curp, Interim City Manager, on 4/6/2022, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge) with Fourth and Pike Apartments, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 516 E. 4th Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 45,000 square feet of residential space, consisting of approximately 29 residential rental units, and approximately 1,700 square feet of commercial space, which remodeling shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total remodeling cost of approximately $18,000,000.

Sponsors: City Manager

Attachments: Transmittal

Ordinance

Attachment

ADJOURNMENT

City of Cincinnati

801 Plum Street, Suite 352
Cincinnati, Ohio 45202

Phone: (513) 352-5232
Email: greglandsman@cincinnati-oh.gov
Web: www.cincinnati-oh.gov

Greg Landsman
Councilmember

April 18, 2022

MOTION

Budget Policy Direction to City Administration for

Recommended FY2023 General Fund Operating Budget

WE MOVE that the City administration prepare a Fiscal Year 2023 Recommended General Fund Operating Budget which respects the following policy guidelines and priorities:

1. The Fiscal Year 2023 General Fund Operating Budget must be balanced. While continuing to strive to have a structurally balanced budget, the fiscal impacts of ongoing State cuts to the Local Government Fund, and revenue losses stemming from the pandemic, the use of one-time sources must be used to balance in Fiscal Year 2023.

2. Given the projected $84 million gap between General Fund revenues and expenditures, federal American Rescue Plan (ARP) funds must be used to offset the projected budget deficit based on the eligible use of funds for pandemic related loss of revenue.

3. Staffing core services, Police, Fire, and Sanitation, must be prioritized.
    a. Police and Fire should be funded consistent with bargaining agreements based on the departments' plans to reach their approved budgeted full-strength complement of 1,059 police officers and 859 firefighters. The Budget should include funding for a 53 Police Recruit Class to start in July 2022 with a second 35 member Police Recruit Class to start in May 2023. The Budget should include funding for Fire Recruit Class #120 with 50 members with a start date in October 2022, and for a second 50 member Fire Recruit Class #121 with at targeted start date of June 2023.

b. Public Services crews should also be funded consistent with bargaining agreements, with every effort made to fill vacancies, including signing and retention pay, and increase the number of crews to improve services and reduce staff burn-out.

4. Other basic and core services should be maintained with recommendations to incrementally restore staff and services to levels necessary to meet the needs of our citizens as fully as possible.

5. The budget should be prepared consistent with the ordinance passed June 21, 2017, which directs the City Council to increase appropriations to human services over a five-year period to 1.5% of the General Fund Budget. Specifically, the FY2023 appropriations should attempt to achieve 1.5% of the General Fund revenue estimate established as part of the Tentative Tax Budget (TTB) for the upcoming fiscal year.

6. As part of an increased commitment to human services funding, especially in light of financial and related pain experienced by our residents in the aftermath of the pandemic, the budget should include a new "Boots on the Ground Fund" to support smaller non-profit organizations that are oftentimes closest to those who need support but are unable to successfully compete for funding as part of existing processes. We can not afford to leave these organizations out.

7. The budget should prioritize efforts to keep neighborhoods safe (Safe and Clean Fund), keep people in their homes (Eviction Prevention Fund), address litter and blight (HARBOR and new litigators to hold accountable problem properties and illegal dumping), offering jobs with career pathways as gainful employment for young people(Youth Jobs).

8. As taxpayers continue to grapple with the costs related to severe weather events, the budget should work to fully fund the work of the Office of Environment and Sustainability.

9. The budget must prioritize leveraged funding efforts that bring jobs to the City.

City of Cincinnati

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Greg Landsman
Councilmember

10. The budget must ensure that our wage enforcement work is fully funded.

11. The budget should maintain support for neighborhood groups, including Neighborhood Community Councils and Neighborhood Business Districts, and resources needed by the Administration to do community engagement and communications.

12. The budget should include and increase in our contribution to the pension by $1million per year.

13. Council remains committed to building a reserve balance of 16.7% of prior year General Fund operating revenues.

Councilmember Greg Landsman

Councilmember Reggie Harris

Councilmember Jeff Cramerding

Interdepartmental Correspondence Sheet

April 20, 2022

TO: Mayor and Members of City Council

FROM: John P. Curp, Interim City Manager **202200963**

SUBJECT: Department of Finance Report for the Month Ended February 28, 2022

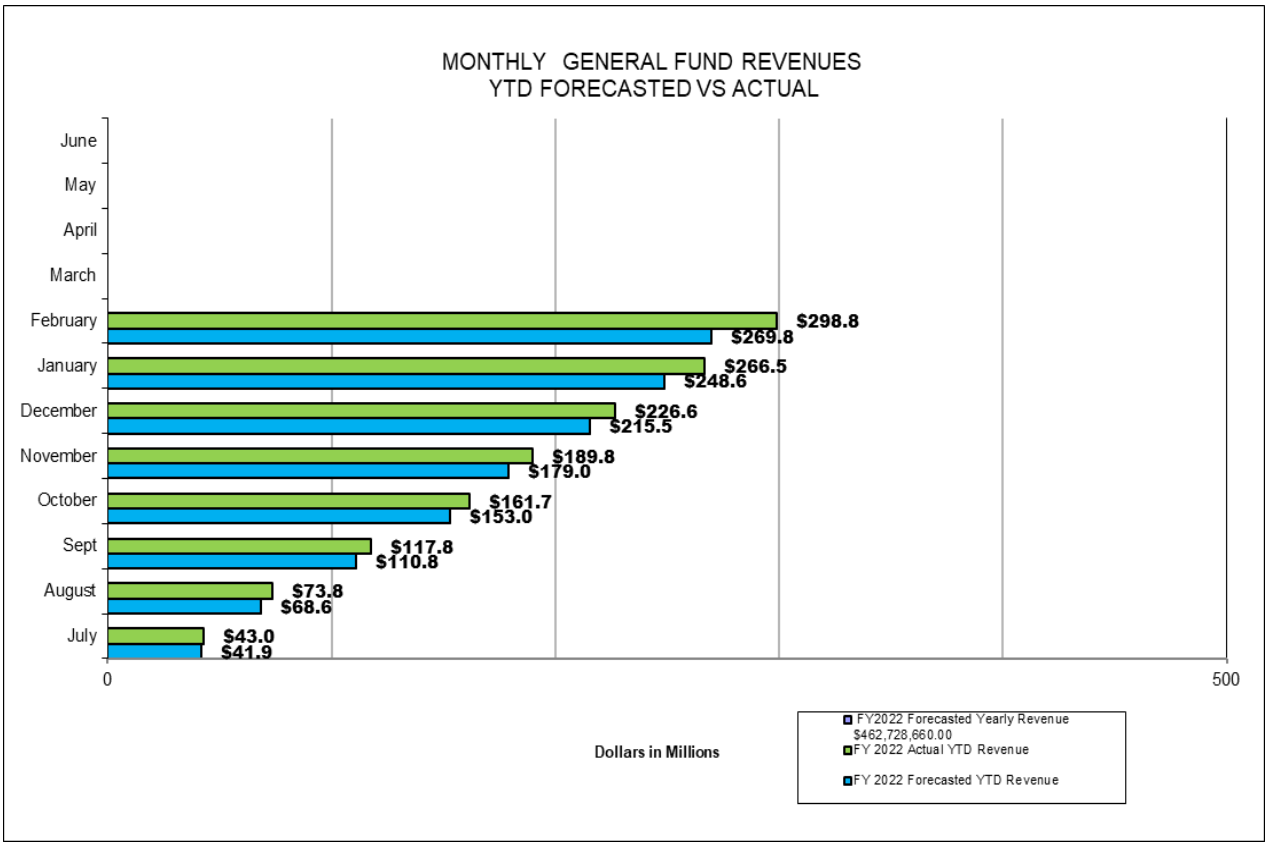
FEBRUARY 2022
MONTHLY FINANCIAL REPORTS

The following report provides an update on the City of Cincinnati's financial condition as of the month ending February 28, 2022. The budget portion of the monthly monitoring report concluded with the January 2022 reporting period. Departments are currently evaluating savings and needs through the end of Fiscal Year 2022. Any issues will be addressed in the FY 2022 Final Adjustment Ordinance (FAO), which will be presented to the City Council in May 2022. The combined Finance and Budget monitoring reports will resume in FY 2023 starting with the September 2022 reporting period.

The revenue variances in this report are based on current year estimates and prior year activity in attached schedules.

A more detailed explanation of revenues is attached for review, including reports comparing current year actual revenue vs. forecasted revenue and prior year actual revenue vs. current year actual revenue. Both of those reports are presented on a monthly and year to date basis.

The chart below portrays the performance of actual revenue collected against the forecasted revenue collected through February 28, 2022 and shows that actual revenue of $298.8 million was above forecasted revenue of $269.8 million by $29 million.



The major revenue components of the General Fund are listed in the table below. This table highlights the year to date variance (favorable and unfavorable) in General Fund revenue collections as compared to forecasted revenue collections. Each major category that differs significantly from forecasted collections will be discussed in further detail.

GENERAL FUND REVENUE SOURCES

	FAVORABLE VARIANCE	(UNFAVORABLE) VARIANCE
General Property Tax	1,760,861	
City Income Tax	20,905,366	
Admissions Tax	2,046,339	
Short Term Rental Excise Tax	384,899	
Licenses & Permits	1,252,300	
Fines, Forfeitures, & Penalties		($47,999)
Investment Income	561,507	
Local Government	2,176,297	
Casino	1,477,752	
Police		($268,565)
Buildings and Inspections	74,254	
Fire	553,262	
Parking Meter	400	
Other		($1,818,687)
	31,193,237	($2,135,250)
Difference	29,057,987	

General Fund (favorable variance) is $29 million above the amount forecasted thru February in the FY 2022 Budget. What follows is an explanation of significant variances of individual General Fund revenue components.

General Property Tax (favorable variance) is up $1.8 million. Revenue is currently greater than projected as a result of higher assessed property values utilized by the County Auditor. However, since the millage rate is lower starting in CY 2022, property tax revenue is expected to be at or near the estimate at year end.

Income Tax (favorable variance) is $21 million above the forecasted amount. The amount of withholding refunds due in the spring of CY 2022 are still unknown, which could affect the variance. Administration is still watching income tax trends very closely due to the shift to remote work.

Admission Tax (favorable variance) is up $2 million. The FY 2022 estimates are conservative due to the unknown level of response to the ongoing pandemic. The return of events since the pandemic and new entertainment venues have both contributed to the favorable variance.

License & Permits (favorable variance) is up $1.3 million. Building permits are trending toward pre-pandemic levels along with Heating & Ventilating permits. The FY 2022 estimate was conservative due to the lingering effects of the pandemic. Administration will continue to monitor the activity.

Investment Income (favorable variance) is up $562k. The favorable variance is due to many investments maturing in December. It is anticipated that investment income will exceed the revenue projections for the fiscal year. Investment income is recognized quarterly in September, December, March and June of each fiscal year.

Local Government (favorable variance) is $2.2 million above the forecasted amount. The favorable variance is the result of increased revenue collection from the State of Ohio General Revenue tax sources.

Casino (favorable variance) is up $1.5 million. The casino revenue is outperforming current estimates, which have been set at pre-pandemic levels.

Other (unfavorable variance) is $1.8 million below forecast. This category is made up of many small sources of revenue that fluctuate from time to time. Finance will continue to monitor these various revenue sources.

Restricted Funds:

Parking System (favorable variance) is $2.2 million above forecasted amount. There was a one-time payment received on the sale of a parking lot easement that contributes to $1.4 million of this variance. The other variance is a result of the estimate being conservative as we are still trying to find the new normal from the pandemic and hybrid work schedules of downtown companies.

Municipal Golf (favorable variance) is up $931k. The Cincinnati Recreation Commission has experienced an increase in the utilization of the golf courses as people are looking for outside activities during the pandemic, resulting in increased revenue.

Parking Meter (unfavorable variance) is $625k below the estimate. Lower demand from the pandemic and permanent elimination of spaces (Court St, the Banks and OTR) is leading to the unfavorable variance.

Recreation Special (unfavorable variance) is down $1 million. The Cincinnati Recreation Commission is still seeing a reduction in revenue due to lower attendance of recreation center programs as a result of the lingering pandemic. Cancellations of some team sports have also occurred due to a shortage of game officials.

Hazard Abatement (unfavorable variance) is down $745K. Even though the foreclosure ban has been lifted there has not been an increase in foreclosures. Therefore, the number of Vacant Foreclosure Licenses is still down. The Vacant Buildings Maintenance License revenue has not started to rebound either. A driver could be that homes are staying occupied and development plans are being instituted. This will lead to lower revenue in this fund but there may be more revenue in the General Fund as permits for improvements increase.

Submitted herewith are the following Department of Finance reports:

1. Comparative Statement of Revenue (Actual, Forecast and Prior Year) as of February 28, 2022.

2. Audit of the City Treasurer's Report for the month ended January 31, 2022.

3. Statement of Balances in the various funds as of February 28, 2022.

By approval of this report, City Council appropriates the revenues received in the various restricted funds on the attached Statement of Balances and as stated in greater detail on the records maintained by the Department of Finance, Division of Accounts & Audits. Such revenues are to be expended in accordance with the purposes for which the funds were established.

c: William "Billy" Weber, Assistant City Manager
Karen Alder, Finance Director

Attachments

city of CINCINNATI
Interdepartment Correspondence Sheet

April 20, 2022

TO: Mayor and Members of City Council 202201020

FROM: John P. Curp, Interim City Manager

SUBJECT: **Ordinance - Property Exchange Agreement Experimental Holdings, Inc.**

Attached is a ordinance captioned:

> **AUTHORIZING** the City Manager to execute a Property Exchange Agreement with Experimental Holdings, Inc. for the exchange of real property generally located between Walworth Avenue and Columbia Parkway in the Columbia Tusculum neighborhood.

The Board of Park Commissioners at their **April 18, 2019** meeting approved the sale of the City Sale Property to Developer. The Administration recommends the adoption of this resolution.

Attachment I – Agreement

cc: John Neyer, Interim Director of Parks
Andrew Garth, City Solicitor

{00358807-1}

AUTHORIZING the City Manager to execute a *Property Exchange Agreement* with Experimental Holdings, Inc. for the exchange of real property generally located between Walworth Avenue and Columbia Parkway in the Columbia Tusculum neighborhood.

WHEREAS, the City owns certain real property lying between Columbia Parkway to the north and Walworth Avenue to the south in the Columbia Tusculum neighborhood, as more particularly described and depicted in the *Property Exchange Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the "Property"), which Property is under the management and control of the Board of Park Commissioners of the City of Cincinnati (the "Park Board"); and

WHEREAS, Experimental Holdings, Inc., an Ohio corporation ("Developer"), owns two parcels of land adjoining the Property and desires to purchase a portion of the Property, as more particularly depicted and described on Attachment A (the "Sale Property") to facilitate the construction of new single-family housing (the "Project"); and

WHEREAS, Developer's real property abuts Columbia Parkway, and developer desires to convey to the City certain portions of Developer's property for use by the City as greenspace along Columbia Parkway (the "Exchange Property"); and

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

WHEREAS, the City Manager, upon consultation with the Park Board, has determined that the Sale Property is not needed for park purposes or any other municipal purpose; and

WHEREAS, the City's Real Estate Services Division has determined, by professional appraisal, that: (i) the fair market value of the Sale Property is approximately $25,000; and (ii) the fair market value of the Exchange Property is approximately $1,500, a difference of $23,500, which Developer has agreed to pay; and

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

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to acquire, construct, enlarge, improve, or equip and to sell, lease, exchange, or

otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

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

WHEREAS, in furtherance of the foregoing public purpose, 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 is in accordance with applicable state and local laws; and

WHEREAS, the Park Board approved the sale of the Sale Property to Developer and approved the acceptance of the Exchange Property at its meeting on April 18, 2019; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property at its meeting on September 6, 2019; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Property Exchange Agreement* with Experimental Holdings, Inc., an Ohio corporation ("Developer"), in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will convey to Developer approximately 0.0718 acres of City property lying between Walworth Avenue to the south and Columbia Parkway to the north in Columbia Tusculum, as more particularly described as follows (the "Sale Property"):

> Situated in the State of Ohio, Hamilton County, City of Cincinnati, being in Section 31, Town 4, Fractional Range 2, Miami Purchase, and being all of Lot 2 of B.F. Strader's Addition to the Town of Pendleton and a portion of a vacated 10 foot wide alley per Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office and being more particularly described as follows:
>
> Commencing at a chiseled "X" set at the southeast comer of Lot 3 of said B.F. Strader's Addition, said chiseled "X" being North 37° 36' 50" West, 2091.43 feet from Hamilton County Benchmark #6963, thence, North

57° 07' 00" West, along the northerly line of Walworth Avenue, 30.01 feet to a 5/8" dia. iron pin set, said 5/8" dia. iron pin set also being the True Point of Beginning for the following described tract:

thence, from said True Point of Beginning, North 57° 07' 00" West, along the northerly line of Walworth Avenue, 17.75 feet to a 5/8" dia. iron pin set;

thence, North 21° 24' 52" West, continuing along said northerly line of Walworth Avenue, 14.30 feet to a 5/8" dia. iron pin set at the southeast comer of Lot 1 of said B.F. Strader's Addition;

thence, North 31° 33' 00" East, along the easterly line of said Lot 1, 98.31 feet to a 5/8" dia. iron pin set at the southwest comer of Lot 84 of said B.F. Strader's Addition;

thence, South 58° 27' 00" East, along the southerly line of said Lot 84, 30.00 feet to a 5/8" dia. iron pin set at the southeast comer of Lot 84 of said B.F. Strader's Addition;

thence, South 31° 33' 00" West, along the westerly line of Lot 3 of B.F. Strader's Addition, 106.09 feet to the True Point of Beginning, containing 0.0718 acres (3,128.86 sq. ft.) of land, more or less. Subject, however, to all legal rights-of-way of previous record.

Basis of Bearings: Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office. Being a part of the land conveyed to the City of Cincinnati in Deed Book 1807, Page 358, Hamilton County Recorder's Office.

Section 2. That pursuant to the *Property Exchange Agreement*, Developer will convey to the City approximately 0.0673 acres of land lying south of Columbia Parkway in Columbia Tusculum, as more particularly described as follows (the "Exchange Property"):

Tract I:

Situated in the State of Ohio, Hamilton County, City of Cincinnati, being in Section 31, town 4, Fractional Range 2, Miami Purchase, and being part of Lots 85 and 86 of B.F. Strader's Addition to the Town of Pendleton and a portion of a vacated 10 foot wide alley per Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office and being more particularly described as follows:

Commencing at a chiseled "X" set at the southeast comer of Lot 3 of said B.F. Strader's Addition, said chiseled "X" being North 37° 36' 50" West, 2091.43 feet from Hamilton County Benchmark #6963, thence, North 57° 07' 00" West, along the northerly line of Walworth Avenue (R/W varies), 47.76 feet to a 5/8" dia. iron pin set, thence, North 27° 24' 52" West, continuing along said northerly line of Walworth Avenue, 65.05 feet to a 5/8" dia. iron pin set, thence, North 24° 58' 37" West, continuing along the easterly line of Walworth Avenue, 72.62 feet to a 5/8" dia. iron pin set at the southwest comer of Lot 86 of said B.F. Strader's Addition; said 5/8" dia. iron pin set also being the True Point of Beginning for the following described tract:

thence, from said True Point of Beginning, North 24° 58" 37" East, along said easterly line of Walworth Avenue, 35.25 feet to the southerly line of Columbia Parkway (R/W varies);

thence, South 58° 27' 00" East, along said southerly line of Columbia Parkway, 55.83 feet;

thence, South 31° 33' 00" West, along the westerly line of Lot 84 of said B.F. Strader's Addition, 35.02 feet to a 5/8" dia. iron pin set at the southwest comer of said Lot 84;

thence, North 58° 27' 00" West, along the southerly line of Lots 85 and 86 of said B.F. Strader's Addition, 51.80 feet to the True Point of Beginning, containing 0.0432 acres (1,884.61 sq. ft.) of land, more or less.

Subject, however, to all legal rights-of-way of previous record. Basis of Bearings: Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office. Previous Deed Reference: Deed Book 9670, Page 1112 of the Hamilton County, Ohio Recorder's Office.

<u>Tract II</u>:

Situated in the State of Ohio, Hamilton County, City of Cincinnati, being in Section 31, town 4, Fractional Range 2, Miami Purchase, and being part of Lot 83 of B.F. Strader's Addition to the Town of Pendleton and a portion of a vacated 10 foot wide alley per Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office and being more particularly described as follows:

Commencing at a chiseled "X" set at the southeast comer of Lot 3 of said B.F. Strader's Addition, said chiseled "X" being North 37° 36' 50"

West, 2091.43 feet from Hamilton County Benchmark #6963, thence, North 57° 07' 00" West, along the northerly line of Walworth Avenue (R/W varies), 30.01 feet to a 5/8" dia. iron pin set, thence, North 31° 33' 00" East, along the westerly line of Lot 3 of said B.F. Strader's Addition, 106.09 feet to a 5/8" dia. iron pin set at the southeast corner of Lot 84 of said B.F. Strader's Addition; said 5/8" dia. iron pin set also being the True Point of Beginning for the following described tract:

thence, from said True Point of Beginning, North 31° 33" 00" East, along the easterly line of said Lot 84, 35.02 feet to the southerly line of Columbia Parkway (R/W varies);

thence, South 58° 27' 00" East, along said southerly line of Columbia Parkway, 30.00 feet;

thence, South 31° 33' 00" West, along the westerly line of Lot 82 of said B.F. Strader's Addition, 35.02 feet to a 5/8" dia. iron pin set at the southwest corner of said Lot 82;

thence, North 58° 27' 00" West, along the southerly line of Lot 83 of said B.F. Strader's Addition, 30.00 feet to the True Point of Beginning, containing 0.0241 acres (1,050.60 sq. ft.) of land, more or less.

Subject, however, to all legal rights-of-way of previous record. Basis of Bearings: Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office. Previous Deed Reference: Deed Book 8910, Page 3623 of the Hamilton County, Ohio Recorder's Office.

Section 3. That the Sale Property is not needed for park purposes or any other municipal purpose.

Section 4. That the City's Real Estate Services Division has determined, by professional appraisal: (i) the fair market value of the Sale Property is approximately $25,000; and (ii) the fair market value of the Exchange Property is approximately $1,500, a difference of $23,500, which Developer has agreed to pay.

Section 5. That eliminating competitive bidding in connection with the City's sale of the Sale Property is in the best interest of the City because it will achieve two important objectives,

namely: (i) it will enable Developer to assemble a buildable site to accommodate the construction of new single-family homes, thereby creating temporary construction jobs that are likely to stimulate economic growth in the Columbia Tusculum neighborhood; and (ii) it will enable the City the acquire additional greenspace and a buffer area along a portion of Columbia Parkway, which will protect the stability of the drilled pier wall that supports Columbia Parkway.

Section 6. That the proceeds from the sale of the Property, if any, shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the sale, and that the City's Finance Director is hereby authorized to deposit amounts in excess amount thereof into Parks Permanent Improvement Fund 752.

Section 7. That the City Manager and other City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of this ordinance, including, without limitation, executing any and all ancillary agreements, deeds, plats, and other documents to facilitate the sale of the Sale Property to Developer and to accept and confirm the conveyance of the Exchange Property to the City, and to note such acceptance on the conveyance instrument.

Section 8. That the City Solicitor shall cause an authenticated copy of this ordinance to be duly recorded in the land records of Hamilton County, Ohio.

Section 9. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed:_____, 2022

_____
Aftab Pureval, Mayor

Attest: _____
Clerk

Contract No: _____

Project: property exchange;
land between Columbia Parkway and Walworth Ave

PROPERTY EXCHANGE 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, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), and **EXPERIMENTAL HOLDINGS, INC.**, an Ohio corporation, the address of which is P.O. Box 8189, Cincinnati, OH 45208 ("**Developer**").

Recitals:

A. The City owns one parcel of undeveloped land (Hamilton County Auditor's Parcel No. 30-1-58) lying between Columbia Parkway to the north and Walworth Avenue to the south as shown on Exhibit A (*Site Map*) hereto (the "**City Parcel**"), which is under the management and control of the Board of Park Commissioners of the City of Cincinnati (the "**Park Board**").

B. Developer owns two adjoining parcels of undeveloped land, one on each side of the City Parcel (Hamilton County Auditor Parcel Nos. 30-1-222 and 30-1-60), also shown on Exhibit A (the "**Developer Parcels**").

C. Developer desires to purchase the southern portion of the City Parcel to create a buildable site, for the construction of up to 3 single-family homes, and in exchange is agreeable to selling to the City the northern portions of the Developer Parcels for use by the City as additional greenspace along Columbia Parkway. The property to be sold by the City to Developer (the "**City Sale Property**"), and the property to be sold by Developer to the City (the "**Developer Sale Property**"), are depicted on Exhibit B (*City Sale Property & Developer Sale Property*") hereto.

D. The City Sale Property is not needed for park purposes or any other municipal purpose.

E. The City's Real Estate Services Division has determined, by appraisal, that: (i) the fair market value of the City Sale Property is approximately $25,000, and (ii) the fair market value of the Developer Sale Property is approximately $1,500, a difference of $23,500, which Developer has agreed to pay.

F. 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.

G. The City has determined that it is in the best interest of the City to eliminate competitive bidding in connection with the sale of the City Sale Property because selling the City Sale Property to Developer, and purchasing the Developer Sale Property from Developer, will accomplish two important objectives, namely: (i) it will enable Developer to assemble a buildable site to accommodate the construction of single family homes, thereby putting the currently undeveloped land to its highest and best use; and (ii) it will enable the City the acquire and maintain additional greenspace along Columbia Parkway.

H. The Cincinnati Park Board approved the sale of the City Sale Property to Developer at its meeting on April 18, 2019.

I. Cincinnati Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the City Sale Property to Developer at its meeting on September 6, 2019.

I. The City's sale of the City Sale Property to Developer was authorized by Ordinance #____-2021 passed by Cincinnati City Council on _____, 2021.

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

1. CLOSING.

(A) Purchase Price. The purchase price for the City Sale Property is $25,000, and the purchase price for the Developer Sale Property is $1,500. At Closing (defined below), Developer shall pay the City an amount equal to the purchase price of the City Sale Property ($25,000) minus the purchase price of the Developer Sale Property ($1,500), which equals $23,500.

(B) Closing Date. The closing on the transaction ("**Closing**") will take place 60 days after the Effective Date, or on such other date as the parties may agree upon. The Closing shall take place at City Hall. At Closing, the City shall accept the Developer Sale Property in "as is" condition, and Developer shall accept the City Sale Property in "as is" condition. If for any reason the Closing has not occurred within sixty (60) days from the date Cincinnati City Council authorizes the transaction, then, unless such date is mutually extended in writing by the parties, this Agreement shall automatically terminate and thereafter neither party shall have any further rights or obligations hereunder.

(C) Cut-Ups; New Legal Descriptions. Prior to Closing, Developer, at its sole cost, shall perform all necessary survey work and prepare all necessary plats and legal descriptions (including residual descriptions) in order to create the City Sale Property and the Developer Sale Property as legal parcels on the tax maps of the Hamilton County Auditor.

(D) Deeds. At Closing, the City shall convey title to the City Sale Property to Developer by Quitclaim Deed in substantially the form of Exhibit C (*Quitclaim Deed – City Sale Property*) hereto (the "**City's Deed**"), and Developer shall convey title to the Developer Sale Property to the City by General Warranty Deed in substantially the form of Exhibit D (*General Warranty Deed – Developer Sale Property*) hereto ("**Developer's Deed**").

(E) Proration of Property Taxes; Closing Documents; Closing Costs. At Closing, (i) there shall be no proration of real estate taxes and assessments with respect to the City Sale Property, and from and after the Closing Developer shall pay all real estate taxes and assessments on the City Sale Property thereafter coming due, and (ii) real estate taxes and assessments with respect to the Developer Sale Property will be prorated as of the date of Closing in accordance with local custom (with such proration to be based upon the acreage of the Developer Sale Property as a percentage of the total acreage of the larger parcel from which the Developer Sale Property is being created). If, upon receipt of the actual tax bills for the Developer Sale Property, it is determined that Developer's estimated prorated share of the taxes and assessments through the date of the Closing, as reflected on the settlement statement, was less than Developer's actual prorated share, Developer shall pay the additional amount to the City within 30 days after receipt of the tax bill. At Closing, the parties shall execute a customary settlement statement; Developer shall deliver a customary title affidavit to the City, and the City shall deliver a customary title affidavit to Developer, using the City's standard forms; and the parties shall execute any and all other closing documents as may be necessary or appropriate and as approved by both parties. Developer shall pay all transfer taxes, conveyance fees, and recording costs payable to the Hamilton County Auditor and Hamilton County Recorder and any and all other closing costs associated with the Closing (except that Developer shall not be required to pay any attorneys fees for the City). *As a material inducement to the City to enter into this Agreement on the terms and conditions set forth herein, the City shall not be required to pay any closing costs associated with the Closing.*

(F) Owner's Title Insurance. At Closing, in lieu of a title policy, Developer shall deliver a General Warranty Deed for the Developer Sale Property.

(H) Phase One Environmental Assessment. No less than fourteen (14) days prior to Closing, Developer, at no cost to the City, shall provide the City with a phase one assessment prepared by Westech Environmental Solutions, evidencing that the Developer Sale Property is free of environmental contamination and that the environmental condition of the Developer Sale Property is otherwise acceptable to the City's Office of Environment and Sustainability.

(I) CR Conditions. As a condition of Closing, the following conditions, as identified in the City's Coordinated Report (**CR #111-2018**) ("**CR Conditions**") shall be satisfied:

(i) *DOTE:* The City's Deed shall include a requirement that any future development on the City Sale Property will require review by the City's Department of Transportation and Engineering ("DOTE") to ensure that the development will not affect the stability of the drilled pier wall that supports Columbia Parkway, and to ensure that there will be an appropriate buffer between Columbia Parkway and the proposed development.

(ii) *SMU:* The City's Deed shall include a requirement that any future development on the City Sale Property will require review by the City's Stormwater Management Utility ("SMU") to ensure that overland flow issues are appropriately addressed.

(iii) *Buildings and Inspections :*The City's Deed shall include a requirement that any future development on the City Sale Property shall conform to all Hillside Overlay Development regulations, and abide by height limitations of the maximum building envelope of 35 ft for the structures, as well as any Park Board requirements that prohibit the encroachment of buildings on the views from Columbia Parkway.

(J) Contingencies; Right to Terminate. If, for any reason, the Closing conditions are not satisfied or cannot be satisfied, as determined by either party in its sole discretion, such party shall have the right to terminate this Agreement, effective immediately, by written notice to the other party, whereupon neither party shall thereafter have any further rights or obligations hereunder.

2. 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 respective addresses set forth in the introductory paragraph of this Agreement. Notices shall be deemed given on the date of receipt. If Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

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

(i) Developer is a corporation duly organized and validly existing under the laws of the State of Ohio, has been properly qualified to do business in 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.

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

(iii) The execution, delivery and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby 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 or any of its members, at law or in equity or before or by any governmental authority.

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

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

(vii) Developer does not owe any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

4. GENERAL PROVISIONS.

(A) Assignment. Developer shall not assign its rights or interests under this Agreement to any third party without the prior written consent of the City, which consent may be withheld in the City's sole discretion.

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

(C) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Developer 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. The City and Developer represent to each other that they have 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.

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

Exhibit A - *Site Map*
Exhibit B - *City Sale Property & Developer Sale Property*
Exhibit C - *Quitclaim Deed – City Sale Property*
Exhibit D - *General Warranty Deed - Developer Sale Property*

[*signature pages follow*]

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

CITY OF CINCINNATI

By: _____

Printed name: _____

Title: _____

Date: _____, 2022

Recommended by:

_____
John Neyer, Interim Director,
Cincinnati Park Board

Approved as to Form:

_____
Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

[*Developer Signature Page Follows*]

EXPERIMENTAL HOLDINGS, INC.,
an Ohio corporation

By: _____

Printed name: _____

Title: _____

Date: _____, 2022

Exhibit A
to Property Exchange Agreement

Site Map

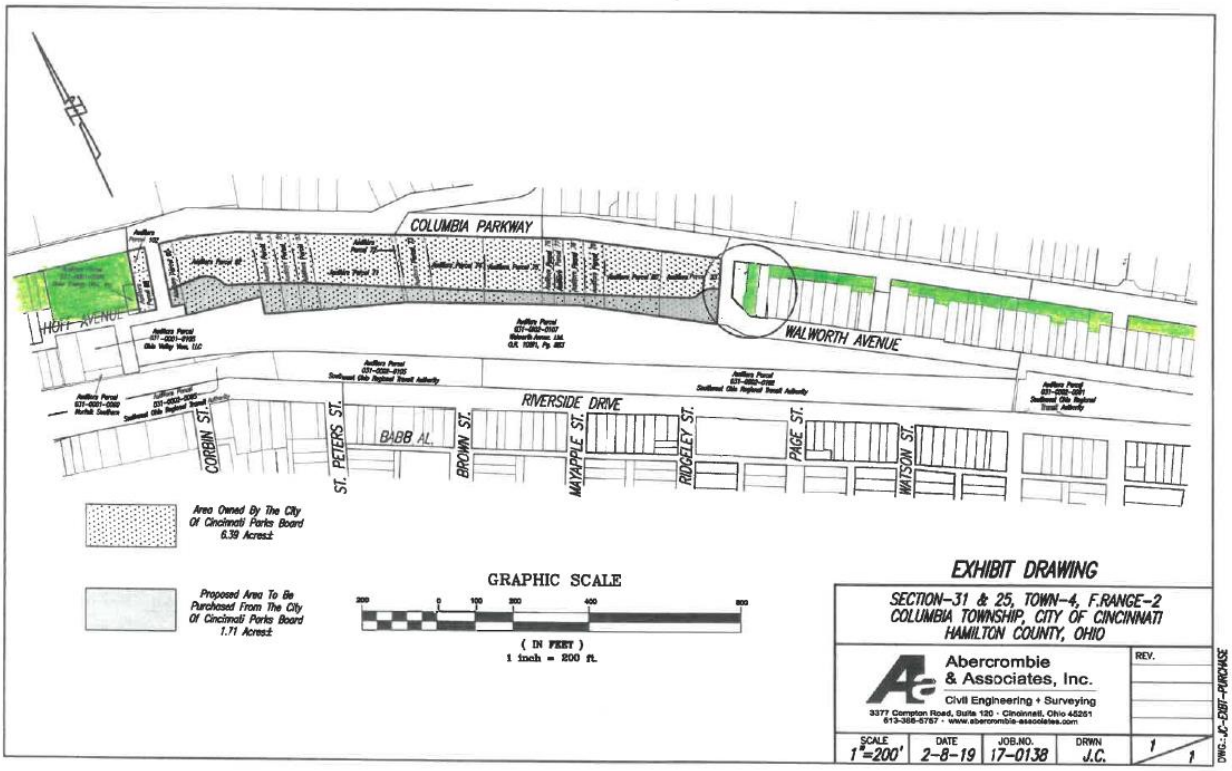


Exhibit B
to Property Exchange Agreement

<u>City Sale Property & Developer Sale Property</u>

Exhibit C
to Property Exchange Agreement

Quitclaim Deed – City Sale Property

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **EXPERIMENTAL HOLDINGS, INC.**, an Ohio corporation, the tax-mailing address of which is P.O. Box 8189, Cincinnati, OH 45208 ("**Grantee**"), all of the City's right, title and interest in and to the real property shown on Exhibit A (*Survey Plat*) and described on Exhibit B (*Legal Description*) hereto (the "**Property**"):

Street Address:	undeveloped land on Walworth Avenue, Cincinnati, OH
Auditor's Parcel No:	cut-up of Auditor parcel # 30-1-58
Prior instrument reference:	Official Record _____, Page _____, Hamilton County, Ohio Records.

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

(1) Any future development shall require review by the City's Department of Transportation and Engineering to ensure that the development will not affect the stability of the drilled pier wall that supports Columbia Parkway, and to ensure that there will be an appropriate buffer between Columbia Parkway and the proposed development.

(2) Any future development shall require review by the City's Stormwater Management Utility to ensure that overland flow issues are appropriately addressed.

(3) Any future development shall conform to all Cincinnati Zoning Code regulations concerning Hillside Overlay Districts, as well as any Cincinnati Park Board requirements that prohibit the encroachment of buildings on views from Columbia Parkway.

The foregoing covenants shall "run with the land" and be binding upon Grantor and its successors-in-interest and shall inure to the benefit of the City of Cincinnati.

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

Executed on _____, 2022.

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. This is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

_____
Notary Public
My commission expires: _____

Approved as to Form:

_____
Assistant City Solicitor

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

EXHIBIT A
to Quitclaim Deed

<u>Survey Plat</u>

EXHIBIT B
to Quitclaim Deed

LEGAL DESCRIPTION

Situated in the State of Ohio, Hamilton County, City of Cincinnati, being in Section 31, Town 4, Fractional Range 2, Miami Purchase, and being all of Lot 2 of B.F. Strader's Addition to the Town of Pendleton and a portion of a vacated 10 foot wide alley per Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office and being more particularly described as follows:

Commencing at a chiseled "X" set at the southeast comer of Lot 3 of said B.F. Strader's Addition, said chiseled "X" being North 37° 36' 50" West, 2091.43 feet from Hamilton County Benchmark #6963, thence, North 57° 07' 00" West, along the northerly line of Walworth Avenue, 30.01 feet to a 5/8" dia. iron pin set, said 5/8" dia. iron pin set also being the True Point of Beginning for the following described tract:

thence, from said True Point of Beginning, North 57° 07' 00" West, along the northerly line of Walworth Avenue, 17.75 feet to a 5/8" dia. iron pin set;

thence, North 21° 24' 52" West, continuing along said northerly line of Walworth Avenue, 14.30 feet to a 5/8" dia. iron pin set at the southeast comer of Lot 1 of said B.F. Strader's Addition;

thence, North 31° 33' 00" East, along the easterly line of said Lot 1, 98.31 feet to a 5/8" dia. iron pin set at the southwest comer of Lot 84 of said B.F. Strader's Addition;

thence, South 58° 27' 00" East, along the southerly line of said Lot 84, 30.00 feet to a 5/8" dia. iron pin set at the southeast comer of Lot 84 of said B.F. Strader's Addition;

thence, South 31° 33' 00" West, along the westerly line of Lot 3 of B.F. Strader's Addition, 106.09 feet to the True Point of Beginning, containing 0.0718 acres (3,128.86 sq. ft.) of land, more or less. Subject, however, to all legal rights-of-way of previous record.

Basis of Bearings: Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office. Being a part of the land conveyed to the City of Cincinnati in Deed Book 1807, Page 358, Hamilton County Recorder's Office.

Exhibit D
to Property Exchange Agreement

General Warranty Deed – Developer Sale Property

SEE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE]

GENERAL WARRANTY DEED

EXPERIMENTAL HOLDINGS, INC., an Ohio corporation ("**Grantor**"), for valuable consideration paid, hereby grants and conveys, with general warranty covenants, to the **CITY OF CINCINNATI**, an Ohio municipal corporation, the tax-mailing address of which is 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), the real property shown on Exhibit A (*Survey Plat*) and described on Exhibit B (*Legal Description*) hereto (the "**Property**"):

Street Address: undeveloped land along Columbia Parkway, Cincinnati, OH

Auditor's Parcel No: cut-up of Auditor parcels # 30-1-222 and 30-1-60

Prior instrument reference: Official Record 14208, Page 980; Official Record 8910, Page 3623, Hamilton County, Ohio Records.

Conveyance Between Adjoining Lot Owners. This conveyance is a transfer between adjoining lot owners made in compliance with Section 711.001, Subsection (B)(1) Ohio Revised Code, and does not create an additional building site nor violate any zoning regulation or other public regulation in the parcel hereby conveyed or the balance of the parcel retained by the grantor herein. The parcel hereby conveyed may not hereafter be conveyed separately from Grantee's adjoining parcel nor any structure erected thereon without the prior approval of the authority having jurisdiction of plats.

Executed on _____, 2022.

EXPERIMENTAL HOLDINGS, INC.,
an Ohio corporation

By: _____

Printed name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022 by _____ (name), the _____(title) of EXPERIMENTAL HOLDINGS, INC., an Ohio corporation, on behalf of the corporation. This is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

_____
Notary Public
My commission expires: _____

Acceptance of this instrument was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

Accepted By:

CITY OF CINCINNATI

By: _____
Printed name: _____
Title: _____

Approved as to Form:

_____
Assistant City Solicitor

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

EXHIBIT A
to General Warranty Deed

<u>Survey Plat</u>

EXHIBIT B
to General Warranty Deed

LEGAL DESCRIPTION

Tract I:

Situated in the State of Ohio, Hamilton County, City of Cincinnati, being in Section 31, town 4, Fractional Range 2, Miami Purchase, and being part of Lots 85 and 86 of B.F. Strader's Addition to the Town of Pendleton and a portion of a vacated 10 foot wide alley per Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office and being more particularly described as follows:

Commencing at a chiseled "X" set at the southeast comer of Lot 3 of said B.F. Strader's Addition, said chiseled "X" being North 37° 36' 50" West, 2091.43 feet from Hamilton County Benchmark #6963, thence, North 57° 07' 00" West, along the northerly line of Walworth Avenue (R/W varies), 47.76 feet to a 5/8" dia. iron pin set, thence, North 27° 24' 52" West, continuing along said northerly line of Walworth Avenue, 65.05 feet to a 5/8" dia. iron pin set, thence, North 24° 58' 37" West, continuing along the easterly line of Walworth Avenue, 72.62 feet to a 5/8" dia. iron pin set at the southwest comer of Lot 86 of said B.F. Strader's Addition; said 5/8" dia. iron pin set also being the True Point of Beginning for the following described tract:

thence, from said True Point of Beginning, North 24° 58" 37" East, along said easterly line of Walworth Avenue, 35.25 feet to the southerly line of Columbia Parkway (R/W varies);

thence, South 58° 27' 00" East, along said southerly line of Columbia Parkway, 55.83 feet;

thence, South 31° 33' 00" West, along the westerly line of Lot 84 of said B.F. Strader's Addition, 35.02 feet to a 5/8" dia. iron pin set at the southwest comer of said Lot 84;

thence, North 58° 27' 00" West, along the southerly line of Lots 85 and 86 of said B.F. Strader's Addition, 51.80 feet to the True Point of Beginning, containing 0.0432 acres (1,884.61 sq. ft.) of land, more or less.

Subject, however, to all legal rights-of-way of previous record. Basis of Bearings: Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office. Previous Deed Reference: Deed Book 9670, Page 1112 of the Hamilton County, Ohio Recorder's Office.

Tract II:

Situated in the State of Ohio, Hamilton County, City of Cincinnati, being in Section 31, town 4, Fractional Range 2, Miami Purchase, and being part of Lot 83 of B.F. Strader's Addition to the Town of Pendleton and a portion of a vacated 10 foot wide alley per Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office and being more particularly described as follows:

Commencing at a chiseled "X" set at the southeast comer of Lot 3 of said B.F. Strader's Addition, said chiseled "X" being North 37° 36' 50" West, 2091.43 feet from Hamilton County Benchmark #6963, thence, North 57° 07' 00" West, along the northerly line of Walworth Avenue (R/W varies), 30.01 feet to a 5/8" dia. iron pin set, thence, North 31° 33' 00" East, along the westerly line of Lot 3 of said B.F. Strader's Addition, 106.09 feet to a 5/8" dia. iron pin set at the southeast corner of Lot 84 of said B.F. Strader's Addition; said 5/8" dia. iron pin set also being the True Point of Beginning for the following described tract:

thence, from said True Point of Beginning, North 31° 33" 00" East, along the easterly line of said Lot 84, 35.02 feet to the southerly line of Columbia Parkway (R/W varies);

thence, South 58° 27' 00" East, along said southerly line of Columbia Parkway, 30.00 feet;

thence, South 31° 33’ 00” West, along the westerly line of Lot 82 of said B.F. Strader’s Addition, 35.02 feet to a 5/8” dia. iron pin set at the southwest corner of said Lot 82;

thence, North 58° 27’ 00” West, along the southerly line of Lot 83 of said B.F. Strader’s Addition, 30.00 feet to the True Point of Beginning, containing 0.0241 acres (1,050.60 sq. ft.) of land, more or less.

Subject, however, to all legal rights-of-way of previous record. Basis of Bearings: Plat Book 2, Page 284 and Plat Book 3, Page 257 of the Hamilton County, Ohio Recorder's Office. Previous Deed Reference: Deed Book 8910, Page 3623 of the Hamilton County, Ohio Recorder’s Office.

city of CINCINNATI
Interdepartment Correspondence Sheet

April 20, 2022

TO: Mayor and Members of Council 202201021

FROM: John P. Curp, Interim City Manager

SUBJECT: Ordinance – Lease Agreement College Hill Town Hall

Attached is an Ordinance captioned:

> **AUTHORIZING** the City Manager to execute a Lease Agreement with Mutual Dance Theatre and Arts Centers pursuant to which Mutual Dance Theatre and Arts Centers will lease the College Hill Town Hall located at 1805 Larch Avenue in College Hill neighborhood for up to 10 years.

Attachment

cc: Jerry L. Wilkerson Jr., Department of Public Services Director

AUTHORIZING the City Manager to execute a *Lease Agreement* with Mutual Dance Theatre and Arts Centers pursuant to which Mutual Dance Theatre and Arts Centers will lease the College Hill Town Hall located at 1805 Larch Avenue in the College Hill neighborhood for up to 10 years.

WHEREAS, the City owns certain real property located at 1805 Larch Avenue in the College Hill neighborhood commonly known as the College Hill Town Hall (the "Property"), as more particularly described in the *Lease Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the "Lease Agreement"), which Property is under the management of the Department of Public Services ("DPS"); and

WHEREAS, pursuant to that certain *Lease Agreement*, dated July 8, 1999, the City leases the Property to Contemporary Dance Theater, Inc., an Ohio nonprofit corporation ("CDT") for a term of up to 30 years, with the current term set to expire on July 8, 2024, for use as a civic center for the College Hill community and as theater instructional space (the "Existing Lease"); and

WHEREAS, CDT has merged out of existence into Mutual Dance Theatre and Arts Centers, an Ohio nonprofit corporation ("MDT"), and MDT desires to terminate the Existing Lease and execute a new lease agreement with the City to use the Property in the same or a similar manner, namely, as a civic center for the College Hill Community and as theater instructional space for a period of up to 10 years (i.e., an initial five-year term and an optional renewal term of five years); and

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

WHEREAS, the City's Real Estate Services Division has determined by an appraisal that the fair market rental value of the Property is approximately $9,000 per year; however, the City has agreed to lease the Property to MDT for less than the fair market rental value, namely $1.00 per year, because the City will receive benefits from the Lease Agreement that equal or exceed the fair market rental value of the Property, including relief from the expense and administrative burden of the management, operation, and security of the Property and the expansion of cultural and educational programs, activities, and opportunities for the broader community; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the use of the Property as a civic center and theater instructional space at its meeting on June 18, 1999; 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 *Lease Agreement* (the "Lease Agreement") with Mutual Dance Theatre and Arts Centers, an Ohio nonprofit corporation ("MDT"), in substantially the form attached as Attachment A to this ordinance and incorporated herein by reference, pursuant to which the City of Cincinnati will lease certain real property located at 1805 Larch Avenue in College Hill commonly known as the College Hill Town Hall (the "Property") to MDT for a 10-year term, which Property is more particularly identified in the Lease Agreement.

Section 2. That the Property is not needed for a municipal purpose for the duration of Lease Agreement.

Section 3. That leasing the Property to MDT is not adverse to the City's retained interest in the Property.

Section 4. That eliminating competitive bidding in connection with the City's lease of the Property is in the best interest of the public because the City has determined that MDT is a community-oriented nonprofit organization with a mission to promote the general health and welfare of the College Hill community and has demonstrated the ability to maintain the Property in a good and safe condition.

Section 5. That the City's Real Estate Services Division has determined by professional appraisal that the fair market rental value of the Property is approximately $9,000 per year; however, the City has agreed to lease the Property to MDT for less than the fair market rental value, namely $1.00 per year, because the City will receive benefits from the Lease Agreement that equal or exceed the fair market rental value of the Property, including relief from the expense and administrative burden of the management, operation, and security of the Property

and the expansion of cultural and educational programs, activities, and opportunities for the broader community.

Section 6. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the provisions and intent of this ordinance and the Lease Agreement; including, without limitation, executing any and all ancillary documents associated with the Lease Agreement, such as amendments or supplements to the Lease Agreement deemed by the City Manager to be in the vital and best interests of the City.

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

Passed: _____, 2022

_____
Aftab Pureval, Mayor

Attest: _____
Clerk

Contract no: _____

Property: College Hill Town Hall

LEASE AGREEMENT

This Lease Agreement ("**Agreement**") is made and entered into, effective as of the Effective Date (as defined on the signature page hereof) by and among the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Agreement is City of Cincinnati, Department of Public Services, 1115 Bates Avenue, Cincinnati, Ohio 45225 (the "**City**"), and **MUTUAL DANCE THEATRE AND ARTS CENTERS**, an Ohio nonprofit corporation, the address of which is 8222 Monon Avenue, Cincinnati, Ohio 45216 ("**Tenant**").

Recitals:

A. The City owns certain real property located at 1805 Larch Avenue in College Hill, identified as Hamilton County Auditor's Parcel ID No. 234-0003-0021-90 (the "**Property**"). The Property contains (i) public recreation playground facilities and an associated parking lot known as the College Hill Playground (the "**Recreation Property**"), which Recreation Property is under the management of the Cincinnati Recreation Commission, and (ii) the College Hill Town Hall, as more particularly described on Exhibit A (*Legal Description -Leased Premises*) hereto (the "**Leased Premises**"), which Leased Premises is under the management of the City's Department of Public Services ("**DPS**").

B. Pursuant to that certain *Lease Agreement*, dated July 8, 1999, the City leases the Leased Premises to Tenant (successor by merger to Contemporary Dance Theater, Inc., an Ohio nonprofit corporation) for a term of up to 30 years (i.e. an initial five year term, with five renewal optional renewal terms of five years each), with the current term set to expire on July 8, 2024, for use as a civic center for the College Hill community and as theater instructional space (the "**Prior Lease**").

C. Following Tenant's merger with Contemporary Dance Theater, Inc., Tenant desires to terminate the Prior Lease and execute a new lease agreement with the City to use the Leased Premises in the same or a similar manner, namely, as a civic center for the College Hill Community and as theater instructional space (the "**Permitted Use**") for a period of up to 10 years (i.e., an initial five-year term and an optional renewal term of five years).

D. The City Manager, in consultation with DPS, has determined that (i) the Leased Premises is not needed for municipal purposes for the duration of this Agreement, and (ii) leasing the Leased Premises to Tenant for the Permitted Use will not be adverse to the City's retained interest in the Property or the Leased Premises.

E. The fair market rental value of the Leased Premises, as determined by appraisal by the City's Real Estate Services Division, is approximately $9,000 per year; however, the City is agreeable to lease the Leased Premises to Tenant for less than its fair market rental value, namely, $1.00 per year, because the City will receive benefits from the Agreement that equal or exceed the fair market rental value of the Leased Premises in that the City will be relieved of the expense and administrative burden of the management, operation, and security of the Leased Premises through the term of this Agreement, and Tenant has agreed to continue to keep the Leased Premises open and available for use as a community civic space.

F. The City has determined that eliminating competitive bidding is in the best interest of the public because Tenant is a community-oriented nonprofit organization with a mission to promote the general health and welfare of the College Hill community, and Tenant has demonstrated experience in the management, operation, and maintenance of the Leased Premises in a good and safe condition.

G. City Planning Commission having the authority to approve the change in the use of City-owned property, approved the use of the Property as a civic center and theater instructional space under the Prior Lease at its meeting on June 18, 1999.

H. Execution of this Agreement was authorized by Ordinance No. [___], passed on [_____].

NOW THEREFORE, the parties hereby agree as follows:

1. Grant.

(A) Grant. On the terms and conditions set forth in this Agreement, the City does hereby lease the Leased Premises to Tenant, and Tenant does hereby lease the Leased Premises from the City, for the Term established under section 2 below. The City makes no representations or warranties to Tenant regarding the physical condition of the Leased Premises. The rights herein granted to Tenant are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Premises, matters that would be disclosed upon an ordinary inspection or survey of the Leased Premises, and any and all rights expressly reserved under this Agreement for the benefit of the City, utility companies, and other third parties.

(B) As-Is Condition. Tenant acknowledges and agrees that Tenant has conducted its own due diligence in order to familiarize itself with the condition and characteristics of the Leased Premises. The City has not made any representations or warranties concerning the title, condition or characteristics of the Leased Premises or the suitability or fitness of the Leased Premises for any purpose, and Tenant acknowledges and agrees that Tenant is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Leased Premises. On the Commencement Date (as defined in section 2 below), Tenant shall accept the Leased Premises in "as is" condition.

(C) Title Matters. The rights herein granted to Tenant are subject and subordinate to the rights of utility providers and others to enter upon the Leased Premises from time to time pursuant to recorded easements and other recorded instruments affecting the Leased Premises (if any). Tenant shall not take any actions that would violate any easements, covenants, restrictions or other matters of record affecting the Leased Premises. Tenant shall not have the right to grant any easements or otherwise encumber the City's title to the Leased Premises without the City's prior written consent, and Tenant acknowledges that any further encumbrances may require approval of City Council under the Cincinnati Municipal Code. The City shall have the right to grant easements to third parties and to take whatever other actions affecting the Leased Premises as may be deemed reasonably necessary by the City so long as such actions do not materially interfere with Tenant's use of the Leased Premises for the Permitted Use, or otherwise unreasonably impair the rights granted to Tenant under this Agreement.

(D) City's Right to Access the Leased Premises. The City hereby reserves the right for its employees, agents, and contractors to enter upon Leased Premises from time to time for the purpose of examining the condition of the Leased Premises, determining Tenant's compliance with the provisions of this Agreement, accessing any public utility installations, or any other proper municipal purpose, as determined by the City, including, but not limited to capital repairs or improvements. The City shall use reasonable efforts to avoid disrupting Tenant's business operations and shall promptly repair any damage to the Leased Premises caused by the City's entry. The City shall use reasonable efforts to notify Tenant prior to entering upon the Leased Premises except that no notice shall be required in the event of an emergency.

(E) Access by Public Utilities. Tenant shall ensure continuous access to the Leased Premises (24 hours/day, 7 days/week, 52 weeks/year) by any and all public utilities that have existing utility facilities within the Leased Premises for the maintenance, repair and replacement thereof, and Tenant shall not undertake any action or construct any improvements within the Leased Premises that may interfere with any such utility company's rights without having first obtained such utility company's consent. If Tenant's

use of the Leased Premises causes damage to existing utility facilities belonging to a utility provider, Tenant shall immediately notify the appropriate utility provider. All costs of such repairing such damage, including without limitation, all costs of replacing any damaged utility facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by Tenant and shall be payable by Tenant within thirty (30) days after Tenant receives documentation substantiating such costs. If any utility provider damages or must remove any improvements installed by Tenant within the Leased Premises in connection with its inspection, operation, maintenance, repair or replacement of its existing utility facilities in the area, Tenant shall be solely responsible for all costs associated with the repair, replacement or relocation of Tenant's improvements.

(F) Use of Recreation Parking Lot. In connection with the Permitted Use, the City does hereby grant to Tenant, its employees, agents, contractors, subcontractors, licensees, and invitees the non-exclusive right to enter upon the Recreation Property for ingress and egress to and from the Leased Premises to the Belmont and Larch Avenues public rights-of-way and the non-exclusive right to use the parking lot located on the Recreation Property. Entry upon the Recreation Property shall be at the sole risk of Tenant, its employees, agents, contractors, subcontractors, licensees, and invitees. While on the Recreation Property, Tenant shall not interfere with the rights of anyone else having the legal right to be on the Recreation Property. Tenant shall indemnify, defend and hold harmless the City and the Cincinnati Recreation Commission, and their officers, employees, agents, and contractors, from and against any and all claims, causes of action, losses, injuries, damages, liability, costs, and Workers' Compensation claims whatsoever resulting from the entry upon the Recreation Property by Tenant, its employees, agents, contractors, subcontractors, licensees, and invitees. Without limitation of the foregoing, Tenant waives all claims against the City and the Cincinnati Recreation Commission for damage or theft of Tenant's equipment or other personal property that may from time to time be at the Recreation Property.

(G) Civic Use. As material inducement for the City to enter into this Agreement, Tenant represents and warrants that it has entered into (or will enter into) a written agreement with The College Hill Forum, an Ohio nonprofit corporation, to grant said organization the right to use the Leased Premises from time to time for public meeting purposes or other functions related to civic engagement.

2. Term.

(A) Initial Term (*5 years*). The initial term of this Agreement ("**Term**") shall commence on the Commencement Date (being the Effective Date, as defined on the signature page hereof), and, unless extended or sooner terminated as herein provided, shall expire on the last day of the fifth (5th) Lease Year (being the date immediately preceding the sixth (6th) anniversary of the Commencement Date. As used herein, a "**Lease Year**" shall mean each successive 12-month period beginning on the Commencement Date.

(B) Renewal Term (*5 years*). Provided Tenant is not in default under this Agreement at the time it exercises its renewal option, Tenant shall have the option to extend the Term of this Agreement, for a renewal period of five years (for a total Term, including the initial Term, of 10 Lease Years), exercisable by giving written notice thereof to the City at least 90 days (but no earlier than nine months) prior to the expiration of the initial Term. The renewal period shall be on the same terms and conditions as set forth herein (except that there shall be no additional renewal options unless agreed to by the parties in a written amendment to this Agreement). As used herein, the "**Term**" of this Agreement means the initial Term and, if applicable, the renewal period.

(C) Early Termination. Notwithstanding anything in this Agreement to the contrary, the City shall have the right to terminate this Agreement by giving Tenant no less than six months prior written notice thereof, if the City determines that the Leased Premises is needed for a municipal purpose. Tenant shall have the right to terminate this Agreement at any time, by giving the City no less than 90 days prior written notice thereof, if Tenant decides for any reason that it no longer requires the use of the Leased Premises in connection with its operations.

3. Rent.

(A) Base Rent. On the Commencement Date, and on each anniversary thereof during the Term, Tenant shall pay the City annual rent for the Leased Premises, in advance, without notice or setoff, in the amount of $1.00 per year.

(B) Late Payment. If any payment owed by Tenant hereunder is not received by the City on the due date, Tenant shall pay the City a late charge equal to five percent of the amount past due, together with interest on the past due amount, until paid, at an annual rate of ten percent. If the Term of this Agreement is terminated or expires prior to the end of a year, the City shall not be required to refund any portion of the prepaid rent for such year to Tenant. All payments shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to: City of Cincinnati, Attention: Real Estate, 801 Plum Street, Room 122, Cincinnati, Ohio 45202, or to such other address as the City may from time to time designate in writing.

(C) Additional Rent. This is a "triple net" lease, and throughout the Term, Tenant shall pay all costs associated with the Leased Premises as additional rent. Tenant shall make such payments directly to the persons or entities to whom such payments are owed. To the extent that the City, rather than Tenant, pays any costs that would otherwise be payable by Tenant under this Agreement, Tenant shall reimburse the City for such costs, as additional rent, within thirty (30) days after Tenant's receipt of documentation substantiating such costs; provided however that with respect to costs that are within the control of the City, the City shall notify Tenant at least 30 days prior to incurring such costs in order to give Tenant the opportunity to address the matter.

(D) Late Charge. If Tenant fails to pay Base Rent or any other amount due and payable to the City under this Agreement when due, and the same remains overdue for longer than thirty (30) days past the due date, the overdue amount shall thereafter bear interest until paid at an annual rate of ten percent (10%).

4. Permitted Use.

(A) Permitted Use. Tenant shall use the Leased Premises primarily as a civic center and as theater instructional space. Tenant shall not use the Leased Premises for any other uses without the prior written consent of the City. Tenant shall not bring or permit to be brought onto the Leased Premises any hazardous materials or other contaminants or substances that are harmful to the public or to the environment.

(B) Legal Requirements. Tenant shall obtain and maintain all necessary licenses and permits and shall operate and maintain the Leased Premises in compliance with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to the Leased Premises, including without limitation all applicable environmental laws (collectively, "**Legal Requirements**").

5. Real Estate Taxes. Tenant acknowledges that the Property, as defined above as Hamilton County Auditor's Parcel ID No. 234-0003-0021-90, is currently exempt from real estate taxes; however, should the Property lose its tax-exempt status during the Term in connection with Tenant's use of the Leased Premises, Tenant shall pay all real estate taxes and assessments levied against the Property that become due and payable during the Term (and regardless of the period to which such taxes and assessment relate). Upon the City's receipt of such real estate tax bills, the City shall invoice Tenant for the amount due, and Tenant shall pay such amount to the City within 30 days thereafter. Tenant may institute proceedings to contest the validity or amount of such taxes or to exempt the Property from taxation, the City, at no cost to the City, shall cooperate with Tenant to the extent that the participation of the owner of the lessor's interest under this Agreement is required or appropriate, but Tenant may not defer payment of such taxes during such contest. Tenant shall be entitled to any and all amounts recovered which relate to tax payments previously made by Tenant. Notwithstanding the foregoing, the City reserves the right to evaluate, on a case-by-case basis, the merit of Tenant's contest and reserves

the right not to cooperate in such contest if, in the reasonable determination of the City, such contest would not be in the best interest of the public.

6. Utilities & Other Expenses. During the Term of this Agreement, Tenant shall pay, when due, (i) any and all utility expenses associated with the Leased Premises, and (ii) any and all other operating expenses associated with the Leased Premises. *Tenant acknowledges and agrees that the City shall not be liable for any expenses associated with the Leased Premises during the Term of this* Agreement.

7. Maintenance and Repairs. Throughout the Term, Tenant, at Tenant's sole expense, shall keep interior, non-structural portions of the Leased Premises in good, safe, orderly, sanitary, and clean condition and repair, ordinary wear and tear excepted, including, without limitation, the interior walls, doors, floors and ceilings, any and all appliances, and the heating, ventilating, plumbing, electrical and mechanical systems within the Leased Premises. In the event of damage to the Leased Premises, Tenant shall promptly repair such damage, at its sole expense, to the satisfaction of the City. If Tenant fails to perform necessary maintenance and repairs as required hereunder and fails to undertake corrective action within 10 days after receiving written notice thereof from the City, then, in addition to the City's other rights and remedies under this Agreement, the City shall have the right to undertake such maintenance and repairs, whereupon Tenant shall reimburse the City for the cost thereof within 30 days after receiving a written invoice from the City indicating the amount due. Notwithstanding the provisions of this section or section 13, if the City determines that emergency repairs are needed, the City shall not be required to give Tenant 10 days notice of the need for such repair and may immediately undertake such repair at Tenant's sole cost.

8. Alterations.

(A) No Alterations or Signs. Except as permitted under this section, Tenant shall not make any alterations or improvements to the Leased Premises, install any signs within the Leased Premises that are visible from outside the Leased Premises, install any new utilities within the Leased Premises, or remove any existing improvements within the Leased Premises, without obtaining the prior written consent of the City. If Tenant proposes to install any permanent-type structures or other improvements within the Leased Premises, Tenant shall also obtain the prior written consent of all utility companies whose utility facilities might be affected.

(B) No Liens. Tenant shall not permit any mechanics liens to attach to the Leased Premises in connection with work performed by or at the request of Tenant.

(C) Compliance with Laws. Tenant shall obtain all necessary City inspection permits for work within the Leased Premises performed by Tenant and shall pay all required permit fees. Tenant shall ensure that all work is performed in compliance with all applicable federal, state and local laws, codes, regulations and other governmental requirements.

9. Insurance; Indemnification.

(A) Insurance. Throughout the Term, Tenant shall maintain: (i) Commercial General Liability insurance with respect to the Leased Premises in an amount not less than $1,000,000 per occurrence, combined single limit/$1,000,000 aggregate, naming the City as an additional insured; and (ii) special peril property insurance on the building in the amount of the full replacement cost thereof; and (iii) and such additional insurance as the City's Risk Management Division may from time to time reasonably require. All insurance required to be maintained by Tenant hereunder shall be issued by insurance companies reasonably acceptable to the City. If Tenant constructs any improvements within the Leased Premises, Tenant shall maintain property insurance on such improvements in the amount of the full replacement cost thereof. On or prior to the Commencement Date and prior to the expiration of each insurance policy, Tenant shall furnish to the City a certificate of insurance evidencing the insurance required hereunder.

(B) Waiver of Subrogation. All improvements, materials, equipment and other personal property of every kind that may at any time be on the Leased Premises or the parking lot located on the Recreation Property shall be on the Leased Premises and the parking lot located on the Recreation Property at Tenant's sole risk, and under no circumstances shall the City be liable for any loss or damage thereto, no matter how such loss or damage is caused. Tenant hereby waives, as against the City, its employees, agents and contractors, all claims and liability, and on behalf of Tenant's insurers, rights of subrogation, with respect to property damaged or destroyed by fire or other casualty or any other cause, it being the agreement of the parties that Tenant shall at all times protect itself against such loss or damage by carrying adequate insurance.

(C) Indemnification. Tenant shall defend (with counsel reasonably acceptable to the City), indemnify and hold the City harmless from and against any and all claims, causes of action, losses, costs, judgments, fines, liability and damages relating to the Leased Premises and accruing during or with respect to the Term of this Agreement, including without limitation any of the foregoing that may occur or be claimed with respect to any death, personal injury or loss of or damage to property on or about the Leased Premises.

10. Casualty. If the Leased Premises is damaged or destroyed by fire or other casualty, Tenant shall repair and restore the Leased Premises, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Leased Premises was in immediately prior to such occurrence. The City and Tenant shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the insurance proceeds are insufficient to fully repair and restore the Leased Premises, Tenant shall make up the deficiency. Tenant 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. Tenant shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Leased Premises is being repaired or restored.

11. Default; Remedies. Should Tenant fail to pay the rent or any other sum due under this Agreement within five days after receiving written notice thereof from the City, or should Tenant fail to observe or perform any other obligation under this Agreement within thirty (30) days after receiving written notice thereof from the City (in either event, a "default"), the City, at its option, immediately or at any time during the continuance of the default, may terminate this Agreement by delivering a written notice of termination to Tenant. Tenant shall pay to the City, upon demand, all costs and damages suffered or incurred by the City in connection with Tenant's default or the termination of this Agreement. Without limitation of the City's other rights and remedies hereunder, upon the occurrence of a default, the City may, but shall not be obligated to, cure or attempt to cure such default at Tenant's sole expense and may, if necessary, enter onto the Leased Premises in order to undertake such cure. Tenant shall pay the City within ten (10) days after the City's written demand an amount equal to all costs paid or incurred by the City in effecting compliance with Tenant's obligations under this Agreement, together with interest thereon from the date that the City pays or incurs such costs at an annual rate of ten percent. The rights and remedies of the City under this Agreement are cumulative and are not intended to be exclusive of, and the City shall be entitled to, any and all other rights and remedies to which the City may be entitled hereunder, at law or in equity. The City's failure to insist in any one or more cases on strict performance of any provision of this Agreement or to exercise any right herein contained shall not constitute a waiver in the future of such right. If Tenant becomes debarred by the federal, state or local government, the same shall constitute an immediate default of Tenant under this Agreement.

12. Notices. All notices required or permitted to be given by either party to the other under this Agreement shall be in writing and shall be personally delivered, or mailed by U.S. mail, to the parties at their addresses set forth in the introductory paragraph of this Agreement or at such other address as either party may designate from time to time. Notices shall be deemed given on the date of receipt. If Tenant sends a notice to the City alleging that the City is in default under this Agreement, Tenant shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, OH 45202.

13. Surrender; Holdover.

(A) Surrender; Holdover. At the end of the Term, Tenant shall remove all of its personal property from the Leased Premises and shall leave the Leased Premises in "broom swept" condition. If Tenant fails to remove any items of personal property at the end of the Term, the City may deem such items to be abandoned, and the City may remove, store, destroy, sell or otherwise dispose of such items as the City sees fit, whereupon Tenant shall pay all costs incurred by the City in connection therewith within fifteen (15) days after receiving written notice from the City of the amount due. If Tenant remains in possession of the Leased Premises after the termination date, then, at the City's option, such holdover shall create a tenancy at will on the same terms and conditions as set forth in this Agreement except that rent payable during such holdover shall be equal to the then fair market rental value of the Leased Premises as determined by appraisal by the City's Real Estate Services Division. Tenant shall pay all costs incurred by the City in connection with Tenant's holdover, including without limitation attorney's fees and court costs.

(B) Removal of Alterations. If Tenant has made improvements to the Leased Premises during the Term, then, at the end of the Term, the City shall identify which improvements Tenant shall be required to surrender (at no cost to the City) and which improvements Tenant shall be required to remove. If Tenant fails to timely remove improvements that are designated for removal by the City, such improvements shall be deemed abandoned by Tenant, whereupon the City may remove, store, keep, sell, discard or otherwise dispose of such improvements, and Tenant shall pay all costs incurred by the City in so doing within twenty days after the City's written demand.

14. General Provisions. Tenant shall not assign its interests under this Agreement or sublet the Leased Premises or otherwise permit any third party or parties to occupy the Leased Premises without the prior written consent of the City. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may be amended only by a written amendment signed by the parties after the date hereof. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be severed from this Agreement, and the remainder of this Agreement shall remain in full force and effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. This Agreement shall not be recorded in the Hamilton County Recorder's Office. This Agreement shall be governed by the laws of the City of Cincinnati and State of Ohio. 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 Tenant agrees that venue in such court is proper. 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. The City and Tenant represent to each other that they have 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. All representations, warranties, covenants, agreements and obligations of the City and Tenant 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 member, officer, agent or employee of the City or Tenant in other than his or her official capacity. No official executing or approving the City's or Tenant's participation in this Agreement shall be personally liable under this Agreement. The City and Tenant each represents to the other that it has the power and authority to enter into and perform its obligations under this Agreement without the consent of anyone who is not a party to this Agreement and that the execution and performance of this Agreement have been duly authorized by all necessary actions on the part of the performing party, including the authorizations and approvals described in the Recitals to this Agreement.

15. Additional Conditions from City's Coordinated Report CR #22-2021**.** Tenant shall comply with the following additional terms and conditions:

(A) Greater Cincinnati Water Works.

(i) If in the future, Tenant determines the existing water system does not meet their fire and/or domestic water demands, then Tenant may need to upgrade the water mains in their area to meet their future water demands. The Water Works approval of this Coordinated Report for the lease of the Leased Premises in no way relieves Tenant of their responsibility to potentially upgrade the water system to meet their future fire and domestic water demands. This work will be performed at the expense of Tenant and not at the expense of the Water Works.

(ii) All conditions of water service to the Leased Premises, including the location of attachment to the public water system, and abandonment of any existing water service branches that presently serve the Leased Premises, will be determined upon submission of final plans and application for service. Water service to the Leased Premises is subject to all rules, regulations, and current practices and policies of the Cincinnati Water Works.

(B) Duke Energy. Duke has a secondary and service to the Leased Premises that it must maintain access to.

16. 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. 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.

17. Termination of Prior Lease. Effective as of the Effective Date, the Prior Lease is hereby terminated and are of no further force or effect, and is superseded in its entirety by this Agreement.

18. Exhibits. The following Exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description*
Exhibit B – *Additional Requirements*

[*Remainder of this Page is Intentionally Blank; Signature Pages to Follow]*

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

CITY OF CINCINNATI

By: _____

Printed name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022 by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

_____
Notary Public
My commission expires: _____

Recommended by:

_____
Jerry Wilkerson
Director, Department of Public Services

Approved as to Form:

_____
Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

[*Tenant Signature Page Follows*]

MUTUAL DANCE THEATRE AND ARTS CENTERS,
an Ohio nonprofit corporation

By: _____

Printed name: _____

Title: _____

Date: _____, 2022

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022 by _____, the _____ of the Mutual Dance Theatre and Arts Centers, an Ohio nonprofit corporation, on behalf of the nonprofit corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

_____
Notary Public
My commission expires: _____

{00351351-4}

EXHIBIT A
to Lease Agreement

Legal Description

Situated, lying and being in the City of Cincinnati, County of Hamilton and State of Ohio, in Section 30, Mill Creek Township, Town 3, Fractional Range 2, and described as follows:

From the intersection of the south line of Larch Avenue, and the easterly line of Belmont Avenue, measure eastwardly along the south line of Larch Avenue 290.62 feet; thence southwardly, at right angles to the south line of Larch Avenue 105 feet for the PLACE OF BEGINNING: thence continuing southwardly along the prolongation of the last described course 71 feet; thence eastwardly parallel to the south line of Larch Avenue 122 feet; thence northwardly, at right angles, to the last described course 71 feet; thence westwardly parallel to the south line of Larch Avenue 122 feet to the place of beginning.

Also the use of a driveway abutting and lying immediately west of the westerly side of the above described tract and the use of an entrance walk extending from the south line of Larch Avenue to the building located on the above described tract and known as the College Hill Town Hall.

EXHIBIT B
to Lease Agreement

Additional Requirements

Tenant and Tenant'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. Tenant 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, Tenant, or Tenant'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 Tenant 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, Tenant, or its contractors and subcontractors. Because this Agreement requires that Tenant 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 Tenants, contractors and subcontractors regularly face in constructing projects or doing business with the City. To the extent a Tenant 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 Tenant, even where such obligations are not imposed on Tenant 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 Tenant 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 Tenant is performing construction work for the City under a construction contract to which the City is a party, Tenant 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

Tenant 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 Tenant 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 Tenant 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 Tenant receives City funds or other assistance, Tenant 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 Tenant 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, Tenant 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 Tenant and/or its general contractor's meet and confer activity, Tenant shall provide to the City, in writing, a summary of Tenant 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, Tenant is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

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

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

(b) Requirement. This Agreement requires that Tenant 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 Tenant; 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, Tenant 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, Tenant shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City's written demand.

(F) Small Business Enterprise Program.

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

(iv) Subject to clause (i) above, Tenant 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. Tenant or its general contractor shall update the report monthly by the 15th. Tenant 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, Tenant 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, Tenant and its general contractor shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by notarized affidavits executed in a form acceptable to the City, submitted upon the written request of the City. The City shall have the right to review records and documentation relevant to the affidavits. If affidavits are found to contain false statements, the City may prosecute the affiant pursuant to Section 2921.12, Ohio Revised Code.

(vi) Subject to clause (i) above, failure of Tenant 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 Tenant 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. Tenant 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, Tenant shall make such payments or reimburse the City for such payments within twenty (20) days of demand therefor.

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Tenant 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 Tenant or in the Project, and Tenant 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, Tenant and its general contractor shall use its best efforts to post available employment opportunities with Tenant, the general contractor's organization, or the organization of any subcontractor working with Tenant or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "**Wage Enforcement Chapter**"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May

17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed $25,000, as described more particularly in the Wage Enforcement Chapter. Cincinnati Municipal Code Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

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

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

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

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

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

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

Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

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

(N) Americans With Disabilities Act; Accessibility.

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

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then Tenant 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. Tenant represents that neither it nor any of its principals is presently suspended or debarred by any federal, state, or local government agency. In completing the Project, Tenant shall not solicit bids from any contractors or subcontractors who are identified as being suspended or debarred by any federal, state, or local government agency. If Tenant or any of its principals becomes suspended or debarred by any federal, state, or local government agency during the term of this Agreement, Tenant shall be considered in default under this Agreement.

city of CINCINNATI
Interdepartment Correspondence Sheet

April 20, 2022

202201033

To: Mayor and Members of City Council

From: John P. Curp, Interim City Manager

Subject: **Emergency Ordinance for Issuance of $10,255,000 Energy Conservation Bonds**

Transmitted herewith is an Emergency Ordinance captioned as follows:

> **PROVIDING** FOR THE ISSUANCE OF BONDS, OR NOTES IN ANTICIPATION OF SUCH BONDS, BY THE CITY OF CINCINNATI, OHIO IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $10,255,000 FOR THE PURPOSE OF FINANCING ENERGY CONSERVATION MEASURES.

This emergency ordinance authorizes the Finance Director to proceed with the sale of the bonds in the amount of not to exceed $10,255,000 to fund energy conservation measures. These bonds are ten-year bonds supported by property tax revenue and the interest rate is expected to be below 6.00%. The proceeds of the bond sale will finance the installation of LED lighting and solar panels at various City facilities. An emergency ordinance is necessary to take advantage of currently favorable interest rates and to obtain favorable contract pricing.

The Administration recommends passage of this Emergency Ordinance.

cc: William "Billy" Weber, Assistant City Manager
Karen Alder, Finance Director

Attachment

EMERGENCY

City of Cincinnati

An Ordinance No. _____ -2022

PROVIDING FOR THE ISSUANCE OF BONDS, OR NOTES IN ANTICIPATION OF SUCH BONDS, BY THE CITY OF CINCINNATI, OHIO IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $10,255,000 FOR THE PURPOSE OF FINANCING ENERGY CONSERVATION MEASURES.

WHEREAS, Council requested that the Finance Director, as fiscal officer of the City, issue a certificate as to the estimated life of the improvements described herein, and the maximum maturity of the bonds referred to herein; and

WHEREAS, the Finance Director has estimated the life of the improvements to be at least five (5) years, and has further certified that the maximum maturity of the bonds is ten (10) years, and the maturity of the notes, in anticipation thereof, is five (5) years; now, therefore,

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

Section 1. That it is necessary to issue bonds of the City of Cincinnati, Ohio ("City"), in the principal amount of not to exceed $10,255,000 (property tax supported), for the purpose of providing funds to pay the cost and expense of energy conservation measures. This Council hereby finds that energy conservation measures shall also include construction, modification, installation, or remodeling of systems that harvest renewable energy from solar, wind or water for use primarily within a building or complex of buildings, and shall also include the construction of, installation or modification of an installation in, or remodeling of, a new or existing building or infrastructure, to reduce energy consumption; and for paying legal, advertising, printing, and all expenses incidental to said improvements. Such principal amount may be increased by the amounts necessary to fund a debt service reserve fund (if needed), capitalized interest (if any), costs of issuance, and other necessary and permitted costs, all as determined by the Fiscal Officer.

Section 2. That bonds of the City of Cincinnati, Ohio, be issued in the principal amount of not to exceed $10,255,000 for the purpose aforesaid. Said bonds shall be dated as determined by the Finance Director, of the denomination of $5,000 each, or any integral multiple thereof, or such other denomination, numbered sequentially as determined by the Finance Director, and shall bear interest at the rate, or rates, not in excess of six per centum (6.00%) per annum, payable December 1, 2023, and semiannually thereafter on June 1 and December 1 of each year, or such other dates as determined by the Finance Director, until the principal sum is paid. Provided, however, that if said bonds are sold bearing a different rate or rates of interest from that herein before specified, said bonds shall bear such rate, or rates, of interest as may be accepted by the Finance Director. The property tax supported bonds shall be designated 22-1-G1423, or as otherwise designated by the Finance Director. Said bonds shall mature or be subject to mandatory sinking fund redemption on December 1, or such other date of each year as determined by the Finance Director, such maturities and mandatory sinking fund redemption amounts to be determined by the Finance

Director. The Finance Director will determine whether such bonds are callable (and associated call features) or non-callable at the time of financing.

Notice of the call for redemption of said bonds, specifying the numbers of the bonds to be redeemed, shall be sent by the Bond Registrar and Paying Agent by registered or certified mail to the registered holders thereof, not less than thirty (30) days nor more than sixty (60) days prior to the date of redemption, upon which date all interest upon said bonds or portions thereof so called shall cease except those as to which default shall be made, upon presentation, in the payment of the redemption price. Prior to any notice of call for redemption funds for such redemption shall be on deposit with the Bond Registrar and Paying Agent, and the City shall direct the Bond Registrar and Paying Agent in writing to make any notice of call for redemption.

Section 3. That said bonds shall express upon their face the purpose for which they are issued and that they are issued pursuant to this ordinance, Chapter 303 of the Cincinnati Municipal Code, and Chapter 133 of the Ohio Revised Code. They shall bear the facsimile signature of the Mayor and the facsimile signature of the Finance Director, and shall bear the manual authenticating signature of an authorized representative of U.S. Bank, N. A. (herein the "Bond Registrar and Paying Agent"), Cincinnati, Ohio, which is hereby designated to act as bond registrar, transfer agent, and paying agent with respect to the bonds. The bonds shall also bear the corporate seal of the City or a facsimile thereof. The bonds shall be issued in fully registered form. The bonds shall be designated "Energy Conservation Bonds" or such designation as provided in the certificate of award. Such bonds shall be payable as to principal, upon the presentment and surrender for cancellation of the bonds, in lawful money of the United States of America at the Bond Registrar and Paying Agent, and payment of the interest thereon shall be made by the Bond Registrar and Paying Agent on each interest payment date to the person whose name appears on the bond registration records as the registered holder thereof, by check or draft mailed to such registered holder at his or her address as it appears on such registration records.

Section 4. That, if the Finance Director, in the exercise of his or her judgment, determines that it is preferable that notes rather than bonds be issued initially, there are hereby authorized notes in the aggregate principal amount of not to exceed $10,255,000, which may be issued in anticipation of the issuance of a like principal amount of said bonds for the purpose described in Section 1 hereof. Such notes shall be designated "Energy Conservation Bond Anticipation Notes," as applicable; shall be issued in such numbers and denominations as may be determined by the Finance Director; shall bear interest at a rate or rates not in excess of six per centum (6.00%) per annum, as shall be approved by the Finance Director, payable on such dates as are determined by the Finance Director; shall be dated as of their date of issuance; shall mature on such date or dates as may be selected by the Finance Director; may be callable in whole or in part at any time prior to maturity as approved by the Finance Director; may be issued in installments as approved by the Finance Director; and shall be payable as to principal at the office of the Bond Registrar and Paying Agent or the office of the Treasurer of the City, and the interest thereon shall be paid by the Bond Registrar and Paying Agent or the office of the Treasurer of the City on each interest payment date to the holders of the notes. Said notes shall bear the facsimile signature of the Mayor and the manual signature of the Finance Director, shall bear the corporate seal of the City, and shall express on their faces the purpose for which they are issued and that they are issued pursuant to this ordinance.

Section 5. That, for the purpose of providing the necessary funds to pay the interest on the foregoing issue of bonds or notes promptly when and as the same falls due, and also to provide for the discharge of said bonds or notes at maturity and for the payment of mandatory sinking fund redemptions, there shall be and is hereby levied on all the taxable property in the City of Cincinnati, in addition to all other taxes, a direct tax annually during the period said bonds are to run, outside of the limitations imposed by Article XII, Section 2, of the Ohio Constitution and Section 5705.02 of the Ohio Revised Code, and by virtue of Section 4 of Article VIII of the Charter of the City of Cincinnati, in an amount sufficient to provide for the payment of said interest, when and as the same shall fall due, and also to discharge the principal of said bonds or notes at maturity and to pay mandatory sinking fund redemptions, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution.

Said tax shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof. The funds derived from said tax levies hereby required shall be placed in a separate and distinct fund which, together with the interest collected on the same, shall be irrevocably pledged for the payment of principal of and interest on said bonds or notes when and as the same fall due.

Section 6. That said bonds or notes shall be first offered to the City Treasurer as the officer in charge of the Bond Retirement Fund of said City, and if not taken by the Treasurer, may be offered to the Treasury Investment Account for purchase, and, if not offered to or taken by such account, the Finance Director is hereby authorized to award and sell the bonds at public or private sale, in the Finance Director's sound discretion without further action by this Council, at such price (but not less than 97% of par, excluding original issue discount) as is determined by the Finance Director, plus accrued interest on the aggregate principal amount of the bonds from their dates to the date of delivery and payment. The City Manager or Finance Director is hereby authorized to make arrangements for the delivery of the bonds to, and payment therefore by, the purchaser or purchasers thereof at the price determined by the Finance Director; and the City Manager or Finance Director is hereby authorized to execute a purchase agreement (including the certificate of award) for the bonds without further action by this Council. The Finance Director is hereby expressly authorized to execute a purchase agreement for the bonds provided that the true interest cost for the bonds shall not exceed 6.00% per annum, and that the true interest cost for the notes shall not exceed 6.00% per annum.

The Finance Director, in his or her discretion, is authorized to waive the requirements of Section 303-7 of the Municipal Code and to direct the sale of the bonds or notes in whatever manner he or she deems appropriate.

Section 7. That Council, for and on behalf of the City of Cincinnati, Hamilton County, Ohio, hereby covenants that it will restrict the use of the proceeds of the bonds or notes hereby authorized in such manner and to such extent, if any, and take such other actions as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or that they will not constitute "arbitrage bonds" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations prescribed thereunder. The

Finance Director or any other officer having responsibility with respect to the issuance of the bonds or notes is authorized to give an appropriate certificate on behalf of the City, on the date of delivery of the bonds or notes for inclusion in the transcript of proceedings, setting forth the facts, estimates, circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

These bonds or notes are not designated "qualified tax-exempt obligations" for the purposes set forth in Section 265(b)(3) of the Code.

Section 8. That the Finance Director is hereby authorized to certify a copy of this ordinance to the County Auditor of Hamilton County, Ohio, according to law and do all things necessary to comply with Sections 1 through 7 hereof.

Section 9. That, pursuant to the provisions of Section 133.30 of the Ohio Revised Code, these bonds or notes may be consolidated into a single issue with other bond or notes which have been authorized by this Council as determined by the Finance Director.

That these bonds or notes shall be issued in such designations, series, and shall have maturities or principal payments, as are consistent with the aggregate of the series, periodic maturities or principal payments of the separate issues of bonds as set forth in the respective bond ordinances and as provided in the bond purchase agreement or certificate of award to be entered into by and between the City and an underwriter as determined by the Finance Director and executed by the Finance Director.

Section 10. That this Council hereby determines to issue these bonds or notes in Book-Entry-Only form through The Depository Trust Company, New York, New York. The Letter of Representations to The Depository Trust Company from the City, dated March 21, 1995, as supplemented from time to time, is hereby ratified and confirmed.

So long as these bonds or notes are in Book-Entry-Only form, the following covenants and agreements of the City shall be in effect:

(A) Definitions

"Beneficial Owner" means the person in whose name a bond or note is recorded as the beneficial owner of such bond or note by the respective systems of DTC and each of the DTC Participants.

"CEDE & Co" means CEDE & Co, the nominee of DTC, and any successor nominee of DTC with respect to the bonds or notes.

"DTC" means The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

"DTC Participant" means banks, brokers or dealers who are participants of DTC.

"Letter of Representations" means the Letter of Representations dated March 21, 1995, as supplemented from time to time, from the City and the Paying Agent and

Registrar, to DTC with respect to the bonds or notes, which shall be the binding obligation of the City and the Paying Agent and Registrar.

The bonds or notes shall initially be issued in global book entry form registered in the name of CEDE & Co, as nominee for DTC.

While in book entry form, payment of interest for any bond or note registered in the name of CEDE & Co shall be made by wire transfer or such other manner as permitted by the Letter of Representations, to the account of CEDE & Co on the Interest Payment Date or the redemption date at the address indicated for CEDE & Co in the bond register.

(B) Book Entry Bonds

(i) Except as provided herein, the registered owner of all of the bonds or notes shall be DTC and the bond or notes shall be registered in the name of CEDE & Co, as nominee for DTC. The City and the Paying Agent and Registrar shall supplement (with a description of the bonds) the Letter of Representations with DTC, and the provisions of such Letter of Representations shall be incorporated herein by reference.

(ii) The bonds or notes shall be initially issued in the form of single fully registered global certificates in the amount of each separate stated maturity of the bonds or notes. Upon initial issuance, the ownership of such bonds or notes shall be registered in the City's bond register in the name of CEDE & Co, as nominee of DTC. The Paying Agent and Registrar and the City may treat DTC (or its nominee) as the sole and exclusive registered owner of the bonds or notes registered in its name for the purposes of payment of the principal, or redemption price of or interest on the bonds or notes, selecting the bonds or notes or portions thereof to be redeemed, giving any notice permitted or required to be given to bondholders under this ordinance, registering the transfer of bonds or notes, obtaining any consent or other action to be taken by bondholders and for all other purposes whatsoever; and neither the Paying Agent and Registrar nor the City shall be affected by any notice to the contrary. Neither the Paying Agent and Registrar nor the City shall have any responsibility or obligation to any DTC Participant, any person claiming a beneficial ownership interest in the bonds or notes under or through DTC or any DTC Participant, or any other person which is not shown on the registration books of the Paying Agent and Registrar as being a registered owner, regarding any of the following: the accuracy of any records maintained by DTC or any DTC Participant; the payment of DTC or any DTC Participant of any amount in respect of the principal or redemption price of or interest on the bonds or notes; any notice which is permitted or required to be given to bondholders under this ordinance; the selection by DTC or any DTC Participant of any person to receive payment in the event of a partial redemption of the bonds or notes; or any consent given or other action taken by DTC as bondholder. The Paying Agent and Registrar shall pay from moneys available hereunder all principal of, and premium, if any, and interest on the bonds or notes only to or "upon the order of" DTC (as that term is used in the Uniform Commercial Code as adopted in the State of Ohio), and all such

payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of, and premium, if any, and interest on the bonds or notes to the extent of the sum or sums so paid. Except as provided herein, no person other than DTC shall receive an authenticated bond certificate for each separate stated maturity evidencing the obligation of the City to make payments of principal of, and premium, if any, and interest pursuant to this ordinance. Upon delivery by DTC to the Paying Agent and Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of CEDE & Co, and subject to the provisions of this ordinance with respect to transfers of bonds or notes, the word "CEDE & Co" in this ordinance shall refer to such new nominee of DTC.

(C) Delivery of Bond Certificates

In the event the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain bond certificates, the City may notify DTC and the Paying Agent and Registrar, whereupon DTC will notify the DTC Participants, of the availability through DTC of bond certificates. In such event, the Paying Agent and Registrar shall issue, transfer and exchange, at the City's expense, bond certificates as requested by DTC in appropriate amounts. DTC may determine to discontinue providing its services with respect to the bonds or notes at any time by giving notice to the City and the Paying Agent and Registrar and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the City and Paying Agent and Registrar shall be obligated to deliver bond certificates as described in this ordinance, provided that the expense in connection therewith shall be paid by DTC. In the event bond certificates are issued, the provisions of this ordinance shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal of, premium, if any, and interest on such certificates. Whenever DTC requests the City and the Paying Agent and Registrar to do so, the Paying Agent and Registrar and the City will cooperate with DTC in taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the bonds or notes to any DTC Participant having bonds or notes credited to its DTC account or (ii) to arrange for another securities depository to maintain custody of certificates evidencing the bonds or notes.

Section 11. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of its committees that resulted in such formal action, were in meetings open to the public, in compliance with legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 12. 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 authorize and conduct the sale of the bonds or notes within thirty days of passage of this ordinance in order to take advantage of currently favorable interest rates and to obtain favorable contract pricing.

Passed: _____, 2022

_____
Aftab Pureval, Mayor

Attest: _____
Clerk

city of CINCINNATI
Interdepartment Correspondence Sheet

April 20, 2022

To: Mayor and Members of City Council 202201040

From: John P. Curp, Interim City Manager

Subject: **Emergency Ordinance – City Facility Lighting and Solar Improvements**

Attached is an Emergency Ordinance captioned:

> **ESTABLISHING** new capital improvement program project account no. 980x255x222534, "City Facility Lighting and Solar Improvements," for the purpose of providing resources to install LED lighting, solar, and roofing improvements at City facilities; AUTHORIZING the transfer and appropriation the sum of $10,255,000 from the unappropriated surplus of Energy Conservation Bonds Fund 817 to newly established capital improvement program project account no. 980x255x222534, "City Facility Lighting and Solar Improvements"; and AUTHORIZING the City Manager to enter into an agreement with McKinstry Essention, LLC to provide LED lighting, solar, and roofing improvements at City facilities.

This Emergency Ordinance establishes new capital improvement program project account no. 980x255x222534, "City Facility Lighting and Solar Improvements," for the purpose of providing resources to install LED lighting, solar, and roofing improvements at City facilities. This Emergency Ordinance also authorizes the transfer and appropriation of the sum of $10,255,000 from the unappropriated surplus of Energy Conservation Bonds Fund 817 to newly established capital improvement program project account no. 980x255x222534, "City Facility Lighting and Solar Improvements." Finally, this Emergency Ordinance authorizes the City Manager to enter into an agreement with McKinstry Essention, LLC to provide LED lighting, solar, and roofing improvements at City facilities.

Lighting and solar improvements at City facilities are in accordance with the goals to obtain "100% renewable energy for City government by 2035" and "[r]educe energy consumption [by] 2% annually," as described on pages 97 – 101 of the Green Cincinnati Plan (2018). Lighting and solar improvements at City facilities are also in accordance with the "Sustain" goal to "[b]ecome a healthier Cincinnati" and strategy to "[c]reate a healthy environment and reduce energy consumption," as described on pages 181 – 186 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to execute the contract with McKinstry Essention, LLC to implement LED lighting, solar, and roofing improvements at City facilities.

The Administration recommends passage of this Emergency Ordinance.

cc: Andrew M. Dudas, Budget Director
Karen Alder, Finance Director

Attachment

E M E R G E N C Y

KKF

- 2022

ESTABLISHING new capital improvement program project account no. 980x255x222534, "City Facility Lighting and Solar Improvements," for the purpose of providing resources to install LED lighting, solar, and roofing improvements at City facilities; AUTHORIZING the transfer and appropriation the sum of $10,255,000 from the unappropriated surplus of Energy Conservation Bonds Fund 817 to newly established capital improvement program project account no. 980x255x222534, "City Facility Lighting and Solar Improvements"; and AUTHORIZING the City Manager to enter into an agreement with McKinstry Essention, LLC to provide LED lighting, solar, and roofing improvements at City facilities.

WHEREAS, on May 16, 2018, Council adopted the Green Cincinnati Plan by adopting Motion No. 201800830; and

WHEREAS, lighting and solar improvements at City facilities are in accordance with the goals to obtain "100% renewable energy for City government by 2035" and "[r]educe energy consumption [by] 2% annually" as described on pages 97 – 101 of the Green Cincinnati Plan (2018); and

WHEREAS, lighting and solar improvements at City facilities are in accordance with the "Sustain" goal to "[b]ecome a healthier Cincinnati" and strategy to "[c]reate a healthy environment and reduce energy consumption" as described on pages 181 – 186 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the establishment of capital improvement program project account no. 980x255x222534, "City Facility Lighting and Solar Improvements," for the purpose of providing resources to install LED lighting, solar, and roofing improvements at City facilities is hereby authorized.

Section 2. That the sum of $10,255,000 is hereby transferred and appropriated from the unappropriated surplus of Energy Conservation Bonds Fund 817 to newly established capital improvement program project account no. 980x255x222534, "City Facility Lighting and Solar Improvements."

Section 3. That the City Manager is hereby authorized to enter into an agreement with McKinstry Essention, LLC to provide LED lighting, solar, and roofing improvements at City facilities.

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 execute the contract with McKinstry Essention, LLC to implement LED lighting, solar, and roofing improvements at City facilities.

Passed: _____, 2022

_____
Aftab Pureval, Mayor

Attest: _____
Clerk

city of CINCINNATI
Interdepartment Correspondence Sheet

April 13, 2022

To: Mayor and Members of City Council 202200613

From: John P. Curp, Interim City Manager

Subject: **EMERGENCY ORDINANCE – LEED CRA AGREEMENT WITH FOURTH AND PIKE APARTMENTS, LLC**

Attached is an Emergency Ordinance captioned:

> **APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Fourth and Pike Apartments, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 516 E. 4th Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 45,000 square feet of residential space, consisting of approximately 29 residential rental units, and approximately 1,700 square feet of commercial space, which remodeling shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total remodeling cost of approximately $18,000,000.

BACKGROUND/CURRENT CONDITIONS

Fourth and Pike Apartments, LLC (the "Developer") currently owns the 50-year-old multi-family building located at 516 E. 4th Street (aka 550 E. 4th Street) in the Central Business District. The property is located within the Lytle Park Historic District. Given the age of the property, it requires substantial reinvestment to bring it to market standards. The property was previously occupied but has been vacated in advance of the planned renovation.

DEVELOPER INFORMATION

Fourth and Pike Apartments, LLC is affiliated with Eagle Realty Group. Eagle Realty Group is the real estate subsidiary of Western & Southern Financial Group ("W&SFG"). Eagle Realty Group has decades of experience developing properties in downtown Cincinnati. Previous projects include the 30-unit Sixth & Race Apartments and the 1 million square foot Queen City Square. Eagle Realty Group is also active in dozens of multi-family developments throughout the nation.

W&SFG has a 30+ year history of supporting affordable housing and similarly important City initiatives, from Over-the-Rhine's high-quality, low-income Bracket Village housing project of the 1990s to today's Affordable Housing Trust Fund. W&SFG is the largest

private contributor (tied with the Greater Cincinnati Foundation) to the Affordable Housing Trust Fund, with their recent contribution of $5 million (nearly 10% of the Fund). Further, W&SFG has publicly announced its plans to significantly help create affordable/workforce housing in Cincinnati. They are actively working with local developers to try to advance such projects, including a Walnut Hills workforce housing project (60-80% AMI) in partnership with Urban Sites.

PROJECT DESCRIPTION

The Developer plans to remodel the 50-year-old building into approximately 45,000 square feet of residential space, consisting of approximately 29 residential rental units, and approximately 1,700 square feet of ground-floor commercial space. Floor plans range from one to four-bedroom units. The total project cost is expected to be approximately $18,000,000. The project will be constructed in compliance with LEED Silver, Gold or Platinum standards or Living Building Challenge standards. The project will support the creation of 70 temporary construction jobs with $5,000,000 in annual payroll.

The Developer has agreed to use its best efforts and take affirmative steps to achieve (i) the City's goal of voluntarily meeting thirty percent (30%) SBE participation., and (ii) a sub-goal, being the Company's Project-specific voluntary commitment, of meeting the City's economic inclusion program goals to achieve a standard of no less than: (x) five percent (5%) MBE participation; and (y) seven percent (7%) WBE participation. Further, the Developer has agreed to adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati.

Although it is difficult to determine the exact value of new income tax revenue created by a residential project, we can assume that those living at the project site will contribute 1.8% of their income to the City annually. To measure that value, the below estimation was done. The annual income is calculated on the assumption that each resident will spend 30% of their income on rent and utilities (utilities estimated at $75 per month). This project is anticipated to generate approximately $82,494 per year in City income tax, and $371,223 over the term of the incentive.

Unit Type	Number of Units	Total Housing Cost Including Utilities	Income Assumption (Rent = 30% of income)	Payroll	City Income Tax Annually	City income Tax over 15 years
1BR	6	$2,875	$115,000	$690,000	$12,420	$186,300
2BR	6	$3,575	$143,000	$858,000	$15,444	$231,660
3BR	15	$4,275	$171,000	$2,565,000	$46,170	$692,550
4BR	2	$5,875	$235,000	$470,000	$8,460	$126,900
				$4,583,000	**$82,494**	**$1,237,410**

PROPOSED INCENTIVE

DCED is recommending a 100% (net 52%), 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 LEED Commercial CRA policy established by City Council, this project is located within the Streetcar VTICA Area and is therefore eligible for a 100% (net 52%), 15-year tax exemption.

Although the current policy does not require projects within the Streetcar VTICA Area to be underwritten, the Developer provided a proforma for which DCED completed an underwriting analysis. Based on the analysis, it was determined that there is a gap in the market rate of return that is expected for this type of project in the CBD. While the incentive does slightly increase the rate of return, the rate of return is still lower than similar projects within the market area.

SUMMARY	
Forgone Public Benefit if Project Does not Proceed	
CPS PILOT (Forgone New Revenue)	($1,528,056)
VTICA (Forgone New Revenue)	($694,571)
Income Tax (Forgone New Revenue)	($180,000)
Total Public Benefit Lost	($2,402,628)
Incentive Value	
Annual Net Incentive to Developer	$160,523
Total Term Incentive to Developer	**$2,407,847**
City's Portion of Property Taxes Forgone	**$650,727**
Public Benefit	
CPS PILOT	
Annual CPS Pilot	$101,870
Total Term CPS PILOT	**$1,528,056**
VTICA	
Annual VTICA	$46,305
Total Term VTICA	**$694,571**
Income Tax (Max)**	**$180,000**
Total Public Benefit (CPS PILOT/VTICA /Income Tax)	**$2,402,628**
Total Public Benefit ROI*	$1.00
City's ROI*	$3.69

*If the project were going to happen regardless of incentive, this is the return of real dollars for public benefits as potential future dollars are forgone
**This is a jobs-based estimate and does not include potential income tax from City residents. The standard incentive review is based on new jobs alone while there is benefit from resident incomes that are not captured in the table above

PROJECT TEAM & TIMELINE

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

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorney: Kaitlyn Geiger (Ext. 4544)

The anticipated Council timeline is as follows:

- April 13, 2022: Introduction to City Council
- April 18, 2022: Budget and Finance (1)
- April 25, 2022: Budget and Finance (2)
- April 27, 2022: City Council for Final Approval

RECOMMENDATION

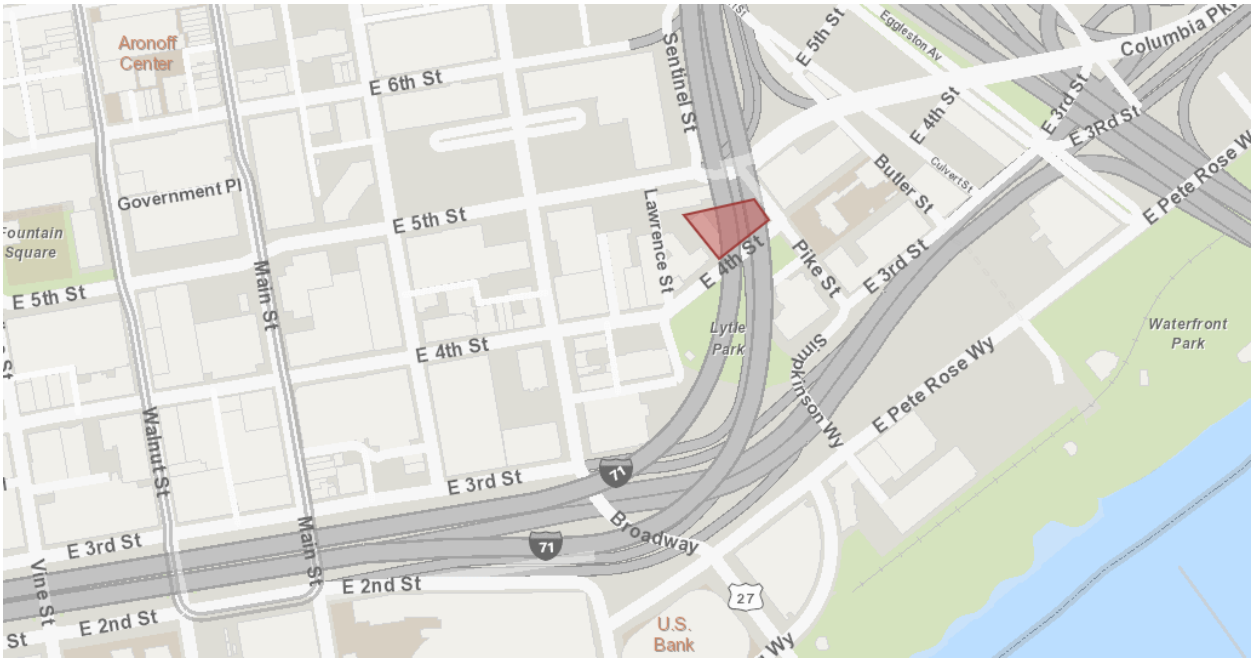
The Administration recommends approval of this Emergency Ordinance.

The project will enable an increase in the number of residents in the building and in the Lytle Park Historic District, further adding to the neighborhood's vibrancy. After 50 years, this property requires substantial reinvestment to bring it to market standards, to achieve LEED Silver certification, and to enable it to contribute positively in the forthcoming decades.

Attachment: A. Property location and photograph

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

Attachment A: Property Location and Photographs



Property Location

516 E. 4th Street (aka 550 E. 4th Street)

EMERGENCY

ZDS AWG/CMZ

City of Cincinnati

An Ordinance No._____ - 2022

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Fourth and Pike Apartments, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 516 E. 4th Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 45,000 square feet of residential space, consisting of approximately 29 residential rental units, and approximately 1,700 square feet of commercial space, which remodeling shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total remodeling cost of approximately $18,000,000.

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

WHEREAS, to encourage the development of real property in a more environmentally friendly manner, the Commercial Policy Ordinance incentivizes: (i) construction and remodeling to Leadership in Energy and Environmental Design ("LEED") standards (as defined by the U.S. Green Building Council); and (ii) construction and remodeling that obtains (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (collectively, "LBC" standards), all pursuant to 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, Fourth and Pike Apartments, LLC (the "Company") desires to remodel an existing building into approximately 45,000 square feet of residential space, consisting of

approximately 29 residential rental units, and approximately 1,700 square feet of commercial space, on real property at 516 E. 4th Street located within the corporate boundaries of the City of Cincinnati, to LEED or LBC standards (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 (LEED or Living Building Challenge)*, 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 percent of the exempt real property taxes, which funds shall be committed by the third-party organization to support the streetcar that specially benefits 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 (LEED or Living Building Challenge)* with Fourth and Pike Apartments, LLC (the "Agreement"), thereby authorizing a 15-year tax exemption for 100 percent of the assessed value of improvements to be made to real property located at 516 E. 4th Street in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the remodeling of an existing building into approximately 45,000 square feet of residential space, consisting of approximately 29 residential rental units, and approximately 1,700 square feet of commercial space, to be constructed in

compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council) or Living Building Challenge standards (as described in the Agreement and as determined by the International Living Future Institute and the Cascadia Green Building Council, as applicable) at a total remodeling cost of approximately $18,000,000.

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: _____, 2022

_____
Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

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 FOURTH AND PIKE APARTMENTS, LLC, an Ohio limited liability company (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. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.

E. The Company is the sole owner of certain real property within the City, located at 516 E. 4th Street, Cincinnati, Ohio 45202 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.

F. The Company has proposed the remodeling of an existing building located on the Property to LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.

G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption

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

H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.

I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars ($1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars ($750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.

J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.

K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.

L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").

M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").

N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.

O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.

P. 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 support the streetcar that specially benefits 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.

Q. The Company acknowledges that the Streetcar 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.

R. 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.

S. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.

T. 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, the Company's commitment to meet certain inclusion goals (as more particularly described in Section 11 below), 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 an existing building on the Property into approximately 45,000 square feet of residential space, consisting of approximately 29 residential rental units, and approximately 1,700 square feet of ground floor commercial space, albeit the commercial space could instead be another residential rental unit or, with the prior written approval of the Director of the Department of Community and Economic Development, the Property could be remodeled into hotel units instead of residential or commercial space (the "Improvements") at an estimated aggregate cost of $18,000,000 to commence after the execution of this Agreement and to be completed no later than June 30, 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 remodeling shall be in compliance with applicable building code and zoning regulations, as well as complying with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council. The Company hereby represents that either or both of the following clauses (a) and (b) are true: (a) it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Silver, Gold or Platinum standards, or (b) it has registered with the International Living Future Institute and/or the Cascadia Green Building Council with intent to certify compliance with LBC standards. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "**ADA**"), and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then the Company shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 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, (D) compliance with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, and (E) 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 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. Business Enterprise Program.

A. Compliance with 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"), which includes SBEs owned by minorities and women ("MBEs" and "WBEs", respectively, as used within CMC Chapter 324, and collectively with SBEs, "Certified Firms"). 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 (i) the City's goal of voluntarily meeting thirty percent (30%) SBE participation, and (ii) a sub-goal, being the Company's Project-specific voluntary commitment, of meeting the City's economic inclusion program goals to achieve a standard of no less than: (x) five percent (5%) MBE participation; and (y) seven percent (7%) WBE participation. A list of SBEs, MBEs, and WBEs 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, MBE, or WBE. The Company shall comply with the provisions of CMC Chapters 323 and 324, including without limitation taking at least the following affirmative steps:

(i) Including qualified Certified Firms on solicitation lists.

(ii) Assuring that Certified Firms 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 Certified Firms 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 Certified Firm 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 Certified Firm participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with 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 Certified Firms, or to provide technical assistance to Certified Firms as may be necessary to reach Certified Firm participation as set out in CMC Chapters 323 and 324 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 Sections 323-99 and 324-99 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, 70 full-time equivalent 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 other jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately $5,000,000 of additional annual payroll prior to the completion of the Project with respect to the full-time equivalent 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 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 affect 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 the streetcar. 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:

Fourth and Pike Apartments, LLC
c/o: Eagle Realty Group, LLC
Attention: Strategic Investments
400 Broadway Avenue
Cincinnati, Ohio 45202

With a copy to:

The Western and Southern Life Insurance Company
Attn: General Counsel
400 Broadway
Cincinnati, Ohio 45202

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

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

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

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

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

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

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

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

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

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

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

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

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

Section 36. Wage Enforcement.

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

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

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

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

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

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

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

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

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

Section 37. Legal Requirements. In completing and operating the Project, the Company shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati.

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

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

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

CITY OF CINCINNATI,
an Ohio municipal corporation

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

FOURTH AND PIKE APARTMENTS, LLC,
an Ohio limited liability company

By: W&S Real Estate Holdings, LLC
an Ohio limited liability company,
its sole member

By: The Western and Southern Life
Insurance Company, an Ohio corporation
its sole member

By: _____
Printed Name: Charles L. Thomas
Title: Vice President

By: _____
Printed Name: Jeffrey L. Stainton
Title: Vice President

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

_____
Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Property Address: 516 E. 4th Street, Cincinnati, Ohio 45202
Parcel ID No.: 084-0003-0208-00

Situated in Sections 12 and 18, Town 4, Fractional Range 1, Miami Purchase, City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to The Western and Southern Life Insurance Company in D.B. 3382 Pg. 205, all of a tract of land conveyed to The Western and Southern Life Insurance Company in D.B. 3765 Pg. 774, all of a tract of land conveyed to The Western and Southern Life Insurance Company in D.B. 3508 Pg. 492 and a portion of vacated Buchanan Street (Ord. No. 262-1969) as recorded in D.B. 3688 Pg. 164, the boundary of which being more particularly described as follows:

Beginning at the intersection of the east right of way line of Lawrence Avenue with the south right of way line of East Fifth Street, witness a cross notch found lying N09°43'06"W a distance of 3.00 feet;

Thence along said south right of way line, N80°13'28"E a distance of 199.24 feet to a cross notch set in the west subsurface limited access right of way line of Interstate 71;

Thence along said west limited access right of way line, along a curve to the right an arc distance of 75.16 feet to a cross notch set, said curve having a radius of 3003.07 feet, a central angle of 01°26'02" and a chord bearing S09°48'38"E a distance of 75.16 feet;

Thence continuing, along a curve to the right an arc distance of 9.57 feet to a cross notch set in the centerline of the aforementioned vacated Buchanan Street, said curve having a radius 2126.14 feet, a central angle of 00°15'28" and a chord bearing S08°55'37"E a distance of 9.57 feet;

Thence along said centerline, S79°27'03"W a distance of 51.11 feet to a cross notch set in a concrete light pole base;

Thence along the northeast line of the aforementioned The Western & Southern Life Insurance Company tract of land conveyed in D.B. 3508 Pg. 492, S38°05'54"E a distance of 100.55 feet to a point in the aforementioned west subsurface limited access right of way line, witness a 5/8" iron pin set (5/8" iron pin with a blue cap marked "Kleingers Reference") lying N06°33'01"W a distance of 12.00 feet along a curve with an arc length of 12.00 feet, a radius of 2126.14 feet and a central angle of 00°19'24", said witness pin also being in the west subsurface limited access right of way line;

Thence along said west limited access right of way line, along a curve to the right an arc distance of 65.86 feet to a 5/8" iron pin set, said curve having a radius of 1319.50 feet, a central angle of 02°51'35" and a chord bearing S04°50'36"E a distance of 65.85 feet;

Thence continuing, along a curve to the right an arc distance of 15.59 feet to a cross notch set in the north right of way line of East Fourth Street, said curve having a radius of 1282.36 feet, a central angle of 00°41'47" and a chord bearing S03°09'19"E a distance of 15.59 feet;

Thence along said north right of way line, S51°54'06"W a distance of 16.95 feet to a cross notch found at the southeasterly corner of a tract of land conveyed to 506 Phelps Holdings LLC in O.R. 11361 Pg. 1631;

Thence along the northeasterly line of said 506 Phelps Holdings LLC tract, N38°05'54"W a distance of 188.08 feet to a 5/8" iron pin found at the northerly corner of said 506 Phelps Holdings LLC tract;

Thence along the northerly line of said 506 Phelps Holdings LLC tract, S78°38'04"W a distance of 84.26 feet to a cross notch found in the aforementioned east right of way line of Lawrence Avenue;

Thence along said east right of way line, N09°43'06"W a distance of 99.84 feet to the Point of Beginning.

Containing 0.645 acres more or less, of which 0.474 acres lie within Section 12 and 0.171 acres lie within Section 18, and being subject to easements, restrictions and rights of way of record.

Bearings are based on Park Place at Lytle Condominium as recorded in P.B. 398 Pg. 34, with the south right of way line of East Fifth Street being N80°13'28"E.

All iron pins set are 5/8" diameter x 30" iron rebar with ID cap stamped "Kleingers".

The above description is based on a field survey performed by The Kleingers Group in May 2021 under the direct supervision of Matthew D. Habedank, Ohio Professional Surveyor No. 8611.

TOGETHER WITH an easement for air rights set forth in Deed Book 3568, Page 329 and referenced in Agreement No. 0891 in Miscellaneous Book 23, Page 116 of the Hamilton County, Ohio records.

0100319.0741227 4879-6704-2306v1

Exhibit B to CRA Agreement

APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED TO EXECUTION VERSION

Community Reinvestment Area Tax Exemption Agreement
(*LEED or Living Building Challenge*)

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 FOURTH AND PIKE APARTMENTS, LLC, an Ohio limited liability company (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. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.

E. The Company is the sole owner of certain real property within the City, located at 516 E. 4th Street, Cincinnati, Ohio 45202 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.

F. The Company has proposed the remodeling of an existing building located on the Property to LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.

G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption

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

H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.

I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars ($1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars ($750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.

J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.

K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.

L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").

M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").

N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.

O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.

P. 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 support the streetcar that specially benefits 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.

Q. The Company acknowledges that the Streetcar 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.

R. 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.

S. This Agreement has been authorized by Ordinance No. _____-2022, passed by Cincinnati City Council on _____, 2022.

T. 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, the Company's commitment to meet certain inclusion goals (as more particularly described in Section 11 below), 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 an existing building on the Property into approximately 45,000 square feet of residential space, consisting of approximately 29 residential rental units, and approximately 1,700 square feet of ground floor commercial space, albeit the commercial space could instead be another residential rental unit or, with the prior written approval of the Director of the Department of Community and Economic Development, the Property could be remodeled into hotel units instead of residential or commercial space (the "Improvements") at an estimated aggregate cost of $18,000,000 to commence after the execution of this Agreement and to be completed no later than June 30, 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 remodeling shall be in compliance with applicable building code and zoning regulations, as well as complying with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council. The Company hereby represents that either or both of the following clauses (a) and (b) are true: (a) it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Silver, Gold or Platinum standards, or (b) it has registered with the International Living Future Institute and/or the Cascadia Green Building Council with intent to certify compliance with LBC standards. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "**ADA**"), and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then the Company shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 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, (D) compliance with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, and (E) 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 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. Business Enterprise Program.

A. Compliance with 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"), which includes SBEs owned by minorities and women ("MBEs" and "WBEs", respectively, as used within CMC Chapter 324, and collectively with SBEs, "Certified Firms"). 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 (i) the City's goal of voluntarily meeting thirty percent (30%) SBE participation, and (ii) a sub-goal, being the Company's Project-specific voluntary commitment, of meeting the City's economic inclusion program goals to achieve a standard of no less than: (x) five percent (5%) MBE participation; and (y) seven percent (7%) WBE participation. A list of SBEs, MBEs, and WBEs 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, MBE, or WBE. The Company shall comply with the provisions of CMC Chapters 323 and 324, including without limitation taking at least the following affirmative steps:

(i) Including qualified Certified Firms on solicitation lists.

(ii) Assuring that Certified Firms 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 Certified Firms 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 Certified Firm 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 Certified Firm participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with 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 Certified Firms, or to provide technical assistance to Certified Firms as may be necessary to reach Certified Firm participation as set out in CMC Chapters 323 and 324 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 Sections 323-99 and 324-99 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, 70 full-time equivalent 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 other jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately $5,000,000 of additional annual payroll prior to the completion of the Project with respect to the full-time equivalent 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 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 affect 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 the streetcar. 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:

Fourth and Pike Apartments, LLC
c/o: Eagle Realty Group, LLC
Attention: Strategic Investments
400 Broadway Avenue
Cincinnati, Ohio 45202

With a copy to:

The Western and Southern Life Insurance Company
Attn: General Counsel
400 Broadway
Cincinnati, Ohio 45202

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

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

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

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

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

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

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

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

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

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

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

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

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

Section 36. Wage Enforcement.

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

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

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

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

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

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

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

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

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

Section 37. Legal Requirements. In completing and operating the Project, the Company shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati.

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

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

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

CITY OF CINCINNATI,
an Ohio municipal corporation

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

FOURTH AND PIKE APARTMENTS, LLC,
an Ohio limited liability company

By: W&S Real Estate Holdings, LLC
an Ohio limited liability company,
its sole member

By: The Western and Southern Life
Insurance Company, an Ohio corporation
its sole member

By: _____
Printed Name: Charles L. Thomas
Title: Vice President

By: _____
Printed Name: Jeffrey L. Stainton
Title: Vice President

Date: _____, 2022

Authorized by resolution dated _____

Approved as to Form:

_____
Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Property Address: **516 E. 4th Street, Cincinnati, Ohio 45202**
Parcel ID No.: **084-0003-0208-00**

Situated in Sections 12 and 18, Town 4, Fractional Range 1, Miami Purchase, City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to The Western and Southern Life Insurance Company in D.B. 3382 Pg. 205, all of a tract of land conveyed to The Western and Southern Life Insurance Company in D.B. 3765 Pg. 774, all of a tract of land conveyed to The Western and Southern Life Insurance Company in D.B. 3508 Pg. 492 and a portion of vacated Buchanan Street (Ord. No. 262-1969) as recorded in D.B. 3688 Pg. 164, the boundary of which being more particularly described as follows:

Beginning at the intersection of the east right of way line of Lawrence Avenue with the south right of way line of East Fifth Street, witness a cross notch found lying N09°43'06"W a distance of 3.00 feet;

Thence along said south right of way line, N80°13'28"E a distance of 199.24 feet to a cross notch set in the west subsurface limited access right of way line of Interstate 71;

Thence along said west limited access right of way line, along a curve to the right an arc distance of 75.16 feet to a cross notch set, said curve having a radius of 3003.07 feet, a central angle of 01°26'02" and a chord bearing S09°48'38"E a distance of 75.16 feet;

Thence continuing, along a curve to the right an arc distance of 9.57 feet to a cross notch set in the centerline of the aforementioned vacated Buchanan Street, said curve having a radius 2126.14 feet, a central angle of 00°15'28" and a chord bearing S08°55'37"E a distance of 9.57 feet;

Thence along said centerline, S79°27'03"W a distance of 51.11 feet to a cross notch set in a concrete light pole base;

Thence along the northeast line of the aforementioned The Western & Southern Life Insurance Company tract of land conveyed in D.B. 3508 Pg. 492, S38°05'54"E a distance of 100.55 feet to a point in the aforementioned west subsurface limited access right of way line, witness a 5/8" iron pin set (5/8" iron pin with a blue cap marked "Kleingers Reference") lying N06°33'01"W a distance of 12.00 feet along a curve with an arc length of 12.00 feet, a radius of 2126.14 feet and a central angle of 00°19'24", said witness pin also being in the west subsurface limited access right of way line;

Thence along said west limited access right of way line, along a curve to the right an arc distance of 65.86 feet to a 5/8" iron pin set, said curve having a radius of 1319.50 feet, a central angle of 02°51'35" and a chord bearing S04°50'36"E a distance of 65.85 feet;

Thence continuing, along a curve to the right an arc distance of 15.59 feet to a cross notch set in the north right of way line of East Fourth Street, said curve having a radius of 1282.36 feet, a central angle of 00°41'47" and a chord bearing S03°09'19"E a distance of 15.59 feet;

Thence along said north right of way line, S51°54'06"W a distance of 16.95 feet to a cross notch found at the southeasterly corner of a tract of land conveyed to 506 Phelps Holdings LLC in O.R. 11361 Pg. 1631;

Thence along the northeasterly line of said 506 Phelps Holdings LLC tract, N38°05'54"W a distance of 188.08 feet to a 5/8" iron pin found at the northerly corner of said 506 Phelps Holdings LLC tract;

Thence along the northerly line of said 506 Phelps Holdings LLC tract, S78°38'04"W a distance of 84.26 feet to a cross notch found in the aforementioned east right of way line of Lawrence Avenue;

Thence along said east right of way line, N09°43'06"W a distance of 99.84 feet to the Point of Beginning.

Containing 0.645 acres more or less, of which 0.474 acres lie within Section 12 and 0.171 acres lie within Section 18, and being subject to easements, restrictions and rights of way of record.

Bearings are based on Park Place at Lytle Condominium as recorded in P.B. 398 Pg. 34, with the south right of way line of East Fifth Street being N80°13'28"E.

All iron pins set are 5/8" diameter x 30" iron rebar with ID cap stamped "Kleingers".

The above description is based on a field survey performed by The Kleingers Group in May 2021 under the direct supervision of Matthew D. Habedank, Ohio Professional Surveyor No. 8611.

TOGETHER WITH an easement for air rights set forth in Deed Book 3568, Page 329 and referenced in Agreement No. 0891 in Miscellaneous Book 23, Page 116 of the Hamilton County, Ohio records.

0100319.0741227 4879-6704-2306v1

Exhibit B to CRA Agreement

APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED TO EXECUTION VERSION