



# City of Cincinnati

801 Plum Street  
Cincinnati, OH 45202

## Agenda - Final

### Budget and Finance Committee

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

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Monday, March 13, 2023

1:00 PM

Council Chambers, Room 300

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### PRESENTATIONS

#### Whex Parking Garage

3CDC

#### AGENDA

#### COMMUNITY REINVESTMENT AREA AGREEMENTS

1. [202300760](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 3/8/2023, **APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption* with 8K Development Company, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 129-131 W. Elder Street in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the upper floors of 2 buildings into approximately 4,680 square feet of residential space, consisting of approximately 10 residential units, at a total construction cost of approximately \$880,600. (Subject to the [Temporary Prohibition List](#) <<https://www.cincinnati-oh.gov/law/ethics/city-business>>)

**Sponsors:** City Manager

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

2. [202300764](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 3/8/2023, **AUTHORIZING** the City Manager to execute a *Property Sale and Development Agreement* with 8K Development Company, LLC for the sale of the upper levels of the City-owned building located at 129-131 W. Elder Street in the Over-the-Rhine neighborhood for residential redevelopment. (Subject to the [Temporary Prohibition List](#) <<https://www.cincinnati-oh.gov/law/ethics/city-business>>)
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)  
[Ordinance](#)  
[Attachment](#)
3. [202300766](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 3/8/2023, **APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Moerlein Properties LLC, thereby authorizing a 12-year tax exemption for 100% of the value of improvements made to real property located at 115-125 W. McMillan Avenue and 124-142 Lyon Street in the CUF neighborhood of Cincinnati, in connection with the construction of a mixed-use development comprised of a parking garage, approximately 5,000 square feet of commercial space, and approximately 263,000 square feet of residential space, consisting of approximately 103 units, at a total construction cost of approximately \$33,000,000. (Subject to the [Temporary Prohibition List](#) <<https://www.cincinnati-oh.gov/law/ethics/city-business>>)
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)  
[Ordinance](#)  
[Attachment](#)

## **REPORTS**

4. [202300750](#) **REPORT**, dated 3/8/2023, submitted Sheryl M. M. Long, City Manager, regarding the Finance and Budget Monitoring Report for the Period Ending December 31, 2022.
- Sponsors:** City Manager
- Attachments:** [Report](#)  
[Attachment I](#)  
[Attachment II](#)  
[Attachment III](#)

## **GRANTS AND DONATIONS**

5. [202300756](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 3/8/2023, **AUTHORIZING** the City Manager to accept and appropriate a grant in an amount of up to \$2,535,400 from the Ohio Child Care Stabilization Sub-Grant through the Ohio Child Care Resource and Referral Association and the Ohio Department of Job and Family Services (ALN 93.575) for the purpose of supporting approximately thirteen Cincinnati Recreation Commission licensed neighborhood childcare programs; and **AUTHORIZING** the Finance Director to deposit the grant funds into Recreation Federal Grant Projects Fund 324.

**Sponsors:** City Manager

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

6. [202300757](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 3/8/2023, **AMENDING** Ordinance No. 243-2022 to authorize the City Manager to accept the transfer of equipment purchased by the Hamilton County Emergency Management Agency with funds awarded through the FY 2022 Homeland Security Grant Program, Urban Area Security Initiative (ALN 97.067).

**Sponsors:** City Manager

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

7. [202300758](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 3/8/2023, **AUTHORIZING** the City Manager to apply for, accept, and appropriate a grant in an amount of up to \$50,000 from the Ohio Environmental Protection Agency's Water Pollution Control Loan Fund for the purpose of providing financial aid to Cincinnati homeowners with defective household sewage treatment systems; and **AUTHORIZING** the Director of Finance to deposit the grant funds into Public Health Research Fund revenue account no. 350x8536.

**Sponsors:** City Manager

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

8. [202300755](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 3/8/2023, **AUTHORIZING** the transfer and appropriation of a donation by the Cincinnati Riding Or Walking Network in an amount up to \$1,115,000 from the unappropriated surplus of Wasson Way Trail Donations Fund No. 437 to capital improvement program project account no. 980x232x232371, "Wasson Way Trail," for the purpose of providing resources to plan, design, and construct future phases of the Wasson Way Trail Network, a shared-use path for bicycles, as well as for the labor, materials, and technologies needed to plan, design, acquire right-of-way, build, survey, and inspect the improvements.

**Sponsors:** City Manager

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

### **EASEMENTS**

9. [202300767](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 3/8/2023, **ACCEPTING AND CONFIRMING** the grant of a public utility easement in favor of the City of Cincinnati for water mains and related fixtures, equipment, and appurtenances through certain real property being part of the Garden Grove Development in Delhi Township, Hamilton County, Ohio in accordance with the plat entitled *GCWW Easement Plat Garden Grove Development, 643 Covedale Avenue, WSL 3681 - Garden Grove - E-1089*, as recorded in Plat Book 489, Page 91, Hamilton County, Ohio Recorder's Office.

**Sponsors:** City Manager

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

10. [202300768](#) **ORDINANCE** submitted by Sheryl M. M. Long, City Manager, on 3/8/2023, **ACCEPTING AND CONFIRMING** the grant of a public utility easement in favor of the City of Cincinnati for water mains and related fixtures, equipment, and appurtenances through certain real property being parts of Lot B and Lots 55 through 60 of the Dunlap Grove Subdivision in Colerain Township, Hamilton County, Ohio in accordance with the plat entitled *Water Line Easement Plat Dunlap Grove Subdivision*, as recorded in Plat Book 491, Page 93, Hamilton County, Ohio Recorder's Office.

**Sponsors:** City Manager

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

### **TRANSFERS AND APPROPRIATIONS**

11. [202300392](#) **ORDINANCE (EMERGENCY)** submitted by Sheryl M. M. Long, City Manager, on 1/25/2023, **AUTHORIZING** the transfer of \$1,480,602.25 from the General Fund balance sheet reserve account no. 050x2580, "Reserve for Weather Related Events, Other Emergency and One-Time Needs," to the unappropriated surplus of General Fund 050; **AUTHORIZING** the transfer and appropriation of \$3,280,602.25 from the unappropriated surplus of General Fund 050 to the non-departmental Judgments Against the City General Fund non-personnel operating budget account no. 050x951x7400 for the purpose of satisfying a legal judgment against the City as well as associated legal fees in *White v. The City of Cincinnati*. (VICE MAYOR KEARNEY AND COUNCILMEMBER JOHNSON ARE EXCUSED FROM VOTING OF THIS ITEM).

**Sponsors:** City Manager

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

### **PRESENTATIONS**

12. [202300842](#) **PRESENTATION** submitted by Councilmember Harris from 3CDC entitled Whex Parking Garage.

**Sponsors:** Harris

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

ADJOURNMENT

March 8, 2023

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

**From:** Sheryl M.M. Long, City Manager

202300760

**Subject: Ordinance – Approving and Authorizing a CRA Tax Abatement with 8K Development Company, LLC**

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Attached is an Ordinance captioned:

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption* with 8K Development Company, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 129-131 W. Elder Street in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the upper floors of 2 buildings into approximately 4,680 square feet of residential space, consisting of approximately 10 residential units, at a total construction cost of approximately \$880,600.

### **BACKGROUND/CURRENT CONDITIONS**

The City owns two adjoining four-story buildings located at 129-131 W. Elder Street in Over-the-Rhine. The properties are currently subject to the City's lease and management agreement with the Corporation for Findlay Market, with the ground floor of both buildings being occupied by commercial tenants, *The Arepa Place*, and *Maverick Chocolate*. The upper floors of the two building currently sit vacant and are in need of substantial renovation. An appraisal of the upper floors of the properties conducted by the City's Real Estate Services Division determined their fair market value to be \$100,000.

The Department of Community and Economic Development (DCED) released a Request for Proposals (RFP) for the sale and redevelopment of the upper floors of the two buildings in February 2022. The RFP received three (3) responses from the following respondents: 8K Development Company, LLC, A.M. Titan Group, and True Blue Properties. A cross-departmental committee reviewed and evaluated the 3 proposals and recommended the sale of property be awarded to 8K Development Company, LLC in June 2022.

### **DEVELOPER INFORMATION**

8K was founded in 2009. Starting with the gut renovation of one dilapidated house on Langland Street in Northside, 8K has grown into an integrated construction and property development company. The renaissance in Cincinnati's core neighborhoods has led to expertise across a broad spectrum of development and construction services such as

comprehensive historic renovations, commercial buildouts, and ground up construction. In 2016, the organization was reconfigured into two companies, 8K Development Co. and 8K Construction Co. Since the reorganization, 8K has completed over 30,000 sf of residential renovation and over 15,000 sf of commercial build-out working primarily in Northside, Over-the-Rhine, and Walnut Hills.

**RECOMMENDATION**

The Administration recommends approval of this Ordinance.

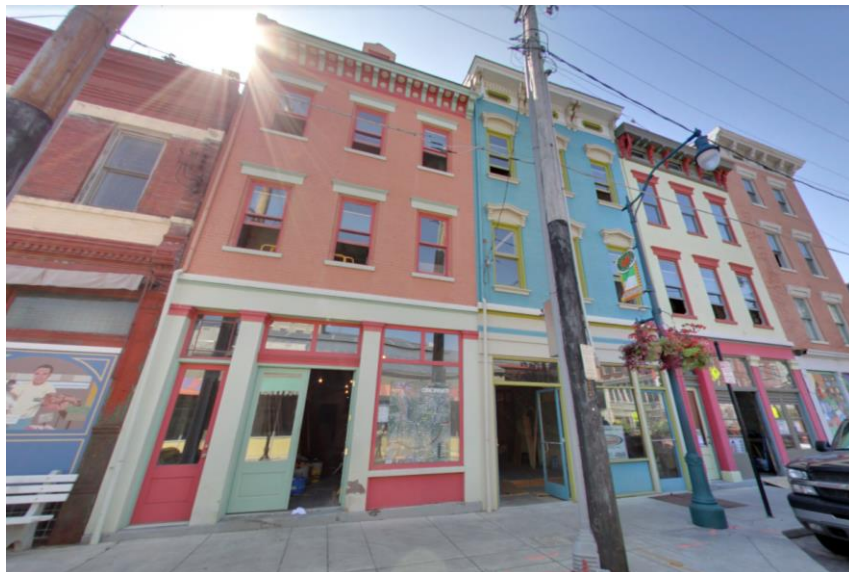
Attachment: Project Outline

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

# Project Outline

<u>Project Description Details</u>	<u>Explanation</u>
Project Name	129-131 W. Elder Street
Street Address	129-131 W. Elder Street
Property Condition	Two historic buildings that sit in Findlay Market; ground floor of 129 W. Elder St. is currently occupied by The Arepa Place and ground floor of 131 W. Elder St. is currently occupied by Maverick Chocolate; the upper floors are vacant and in disrepair
Neighborhood	Over-the-Rhine
Incentive Application Process	Request for Proposals and Commercial CRA – Downtown Streetcar Area
Recent or other projects by Developer	1714 Vine Street, KeyMark Phase I & II
Approval at Planning Commission/Neighborhood support	<ul style="list-style-type: none"> <li>- Approval of sale by City Planning Commission on 9/16/2022</li> <li>- Public engagement meeting held with OTR stakeholders, the Developer and City Planning on 9/6/2022</li> <li>- Written letters of support from OTRCC and CFFM</li> </ul>
Plan Cincinnati Goals	Achieves the Compete Initiative Area Goal 2 (pages 114-120), Live Area goal 3 by (pages 164-178), and Sustain Initiative Area Goal 2 (pages 193-198)

## Project Image





<b><u>Incentive Summary Category</u></b>	<b><u>Explanation</u></b>
Proposed Incentive	15-year, net 67% Commercial CRA tax abatement, with the possibility for 10-year historic extension (at the discretion of Council)
Additional Incentives	\$1.00 property sale to 8K Development Company, LLC
Construction Cost & Private investment committed	Project Costs <ul style="list-style-type: none"> <li>- \$1,056,840 in total project costs (\$880,600 in hard construction costs)</li> </ul> Financing Commitments <ul style="list-style-type: none"> <li>- \$191,840 in Developer equity</li> <li>- \$650,000 permanent loan from North Side Bank</li> <li>- \$215,000 in State Historic Tax Credit Equity</li> </ul>
Sq. Footage by Use	4,680 sf - residential
Number of units and rental ranges	10 one-bedroom units <ul style="list-style-type: none"> <li>- 3 affordable to 50% AMI (\$650/month)</li> <li>- 3 affordable to 60% AMI (\$750/month)</li> <li>- 4 at market rate (\$900/month)</li> </ul>
Jobs created/retained and payroll (living wage)	This project will not create any FTE positions
“But For”	The project, as presented with income restricted units, would not proceed without the proposed incentive package due to the Developer not receiving adequate returns until after Year 7.
Cash on Cash Return for developer (Market return between 8-12%, depends on investment risk)	Without Abatement (Year 5): 6% With Abatement (Year 5): 8%
LEED or other environmental build	Non-LEED
Neighborhood VTICA	No VTICA contribution
Total Public Benefit (Benefits Realized vs Taxes Forgone)	\$2.56 of new CPS/Income taxes for each \$1 forgone
Projected Income Tax Revenue	\$6,750
MBE/WBE Goals	SBE Goal of 30%
Transit Access/Walkability	The project is adjacent to Findlay Market-Elm, Findlay Market-Race, and Brewery District Streetcar stops; the project also sits along the 21, 64, 46, and 78 Metro bus routes

Geography	The project sits in an Opportunity Zone and the OTR-West End NRSA
Historic Preservation/Existing Building Renovation	This project will renovate the upper floors of two historic buildings, preserving and reactivating them for future use
Public Infrastructure Improvements	N/A

Rent	Affordable to Salary	City Jobs (Min Salary exceeds affordable salary)
<b>\$650.00</b>	\$26,000.00	Lifeguard, Laboratory Technician (Part-Time), Breast Feeding Peer Counselor (Part-Time), Parks/Recreation Program Leader (Part-Time)
<b>\$900.00</b>	\$36,000.00	Card Punch Operator, Custodian, Municipal Worker, Recreation Specialist (Part-Time)

AMI	1	2	3	4	5	6	7	8
<b>30%</b>	\$20,100	\$22,950	\$25,800	\$28,650	\$32,470	\$37,190	\$49,910	\$46,360
<b>50%</b>	\$33,450	\$38,200	\$43,000	\$47,750	\$51,600	\$55,400	\$49,250	\$63,050
<b>60%</b>	\$40,140	\$45,840	\$51,600	\$57,300	\$61,920	\$66,480	\$59,100	\$75,660
<b>80%</b>	\$53,520	\$61,120	\$68,800	\$76,400	\$82,560	\$88,640	\$78,800	\$100,880

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with 8K Development Company, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 129-131 W. Elder Street in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the upper floors of 2 buildings into approximately 4,680 square feet of residential space, consisting of approximately 10 residential rental units, at a total construction cost of approximately \$880,600.

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

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

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

WHEREAS, 8K Development Company, LLC (the “Company”) desires to remodel the upper floors of 2 buildings into approximately 4,680 square feet of residential space, consisting of approximately 10 residential rental units, on real property at 129-131 W. Elder Street located within the corporate boundaries of the City of Cincinnati (the “Improvements” and the “Property,” as applicable), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

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

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

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

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

WHEREAS, pursuant to a separate ordinance passed by this Council on or around the date of this Ordinance, the City and the Company will enter into a separate Property Sale and Development Agreement (the “PSDA”), pursuant to which the City will sell the Property to the Company; and

WHEREAS, the City’s Real Estate Services Division determined that the fair market value of the Property is approximately \$100,000; however, subject to the terms and conditions of the PSDA, the City will sell the property for less than fair market value, namely, for \$1.00; and

WHEREAS, the City’s Department of Community and Economic Development estimates that the real property tax exemption for the Improvements will provide an annual net benefit to the Company in the amount of approximately \$10,118; and

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

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement* with 8K Development Company, LLC (the “Agreement”), thereby authorizing a 15-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 129-131 W. Elder Street in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the remodeling of the upper floors of 2 buildings into approximately 4,680 square feet of residential space, consisting of approximately 10 residential rental units, to be completed at a total construction cost of approximately \$880,600.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and
- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District, in accordance with Ohio Revised Code Section 3735.672; and
- (iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

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

Passed: \_\_\_\_\_, 2023

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

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

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

Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and 8K DEVELOPMENT COMPANY, LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City and the Company are parties to a certain *Property Sale and Development Agreement* dated \_\_\_\_\_ (the "Development Agreement"). Pursuant to the Development Agreement, the City conveyed a portion of the Property (as defined below) to the Company.
- B. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- C. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- D. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018, passed on October 31, 2018, Ordinance No. 370-2020, passed on November 12, 2020, and Ordinance No. 24-2022, passed on February 2, 2022 (as amended, the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- E. The Company is the sole owner of certain real property within the City, located at 129-131 W. Elder Street, Cincinnati, Ohio 45202, consisting of the air parcel above the ground floors of the buildings located thereon (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed to remodel the upper floors of buildings located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"), provided that the appropriate development incentives are available to support the economic viability of the Project.
- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing five or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.

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- 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. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2023, passed by Cincinnati City Council on \_\_\_\_\_, 2023.
- Q. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants

contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel the upper floors of 2 existing buildings on the Property into approximately 4,680 square feet of residential space, consisting of approximately 10 residential rental units (the "Improvements") at an estimated aggregate cost of \$880,600 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 or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The remodeling shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "ADA"), and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then the Company shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (100%) of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of fifteen (15) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of remodeling, (B) the cost of remodeling, (C) the facts asserted in the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2025 nor extend beyond the earlier of (i) tax year 2039 or (ii) the end of the fifteenth (15<sup>th</sup>) year of exemption.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create 12 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling.

B. Company’s Estimated Payroll Increase. The Company’s increase in the number of employees will result in approximately \$375,000 of additional annual payroll prior to the

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

completion of the Project with respect to the full-time temporary construction jobs.

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

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

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

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

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

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

Section 18. Revocation.

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

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

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

B. Material Representations. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement shall constitute an event of default for purposes of Section 16 (*Default*) and the basis for revocation under Section 18 (*Revocation*). Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project,

and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

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

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

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

To the City:

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

To the Company:

8K Development Company, LLC  
Attention: Michael Chewning  
57 E McMicken  
Cincinnati, OH 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.

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

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

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

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

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

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

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

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

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

Section 36. Wage Enforcement.

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

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

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

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

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

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

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

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

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

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

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

Section 39. Historic Extension. The parties acknowledge that the Company may be eligible for an extension of the abatement term because of the historical significance of the Property for up to ten years pursuant to the Statute (as may be amended from time to time). Once the Company has satisfied the requirements of the Statute and no later than 180 days prior to the end of the abatement term pursuant to this Agreement, the Company shall provide the City with (i) (a) income tax statements verifying that the Property has been subject to federal tax treatment under 26 U.S.C. 47 and 170(h), or (b) a certification from the Company's accountant confirming that the Property has been subject to federal tax treatment under 26 U.S.C. 47 and 170(h); (ii) such other documentation as requested in writing by DCED to verify the eligibility of the Property for an extension of the abatement term pursuant to the Statute; and (iii) operating revenue and expenses for the prior five years; each of the foregoing must be provided in a format acceptable to the City in its sole and absolute discretion. Following the City's review of the foregoing materials, if the Property qualifies for a historic extension pursuant to the Statute, the parties will execute a mutually satisfactory amendment to this Agreement to extend the abatement term for a period of ten years.

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

8K DEVELOPMENT COMPANY, LLC,  
an Ohio limited liability company

By: \_\_\_\_\_  
Sheryl M. M. Long, City Manager

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

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

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

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

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

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

As it applies to the air lot located above the following parcel:

Situate in the City of Cincinnati, County of Hamilton, State of Ohio, and being all that part of Block "F" which was laid out by Findlay and Garrard recorded in Book 47, Page 319, of the Hamilton County, Ohio Records and being Lot No. fifty-two (52) in Block "F" as now subdivided by the Commissioners in case of Partition of the Estate of James and Jane Findlay, deceased. Said Lot No. Fifty-two (52) in Block "F" fronting twenty (20) feet on the south side of Elder Street (or Market Place) and extending back same width in rear as in front eighty (80) feet to a twelve (12) foot alley.

**Commented [SZ1]:** Interim legal description only.

Final legal description to be provided by Company after Company subdivides City parcel into 2 air parcels, pursuant to the Property Sale and Development Agreement.

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

TO BE ATTACHED

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March 8, 2023

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

**From:** Sheryl M.M. Long, City Manager

202300764

**Subject: Emergency Ordinance – Authorizing a Property Sale and Development Agreement with 8K Development Company, LLC**

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Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the City Manager to execute a *Property Sale and Development Agreement* with 8K Development Company, LLC for the sale of the upper levels of the City-owned building located at 129-131 W. Elder Street in the Over-the-Rhine neighborhood for residential redevelopment.

**BACKGROUND/CURRENT CONDITIONS**

The City owns two adjoining four-story buildings located at 129-131 W. Elder Street in Over-the-Rhine. The properties are currently subject to the City’s lease and management agreement with the Corporation for Findlay Market, with the ground floor of both buildings being occupied by commercial tenants, *The Arepa Place*, and *Maverick Chocolate*. The upper floors of the two building currently sit vacant and are in need of substantial renovation. An appraisal of the upper floors of the properties conducted by the City’s Real Estate Services Division determined their fair market value to be \$100,000.

The Department of Community and Economic Development (DCED) released a Request for Proposals (RFP) for the sale and redevelopment of the upper floors of the two buildings in February 2022. The RFP received three (3) responses from the following respondents: 8K Development Company, LLC, A.M. Titan Group, and True Blue Properties. A cross-departmental committee reviewed and evaluated the 3 proposals and recommended the sale of property be awarded to 8K Development Company, LLC in June 2022.

**DEVELOPER INFORMATION**

8K was founded in 2009. Starting with the gut renovation of one dilapidated house on Langland Street in Northside, 8K has grown into an integrated construction and property development company. The renaissance in Cincinnati’s core neighborhoods has led to expertise across a broad spectrum of development and construction services such as comprehensive historic renovations, commercial buildouts, and ground up construction. In 2016, the organization was reconfigured into two companies, 8K Development Co. and 8K Construction Co. Since the reorganization, 8K has completed over 30,000 sf of residential renovation and over 15,000 sf of commercial build-out working primarily in Northside, Over-the-Rhine, and Walnut Hills.

## **RECOMMENDATION**

DCED is recommending a sale of the upper floors of 129-131 W. Elder Street to 8K Development Company, LLC at the offer price of \$1.00, which is below the appraised fair market value of \$100,000. The City will retain ownership of the first floor of the two buildings and continue a leasing and management relationship with Corporation For Findlay Market for these spaces. DCED is also recommending a 15-year, net 67% Commercial CRA tax abatement on the improved value property with the potential for a 10-year historic extension, the ordinance for which has been introduced in tandem with this ordinance.

DCED's recommendation is based on the following reasons:

- 8K Development Company, LLC has presented the most advantageous proposal for the redevelopment of the upper portion of the property.
- The proposal made by the Developer will return the upper floors of the properties back into productive use by renovating the vacant space into residential units.
- The proposal will create ten (10) units, with six (6) units being affordable to households making between fifty (50%) and sixty (60%) percent of the area median income, and the remaining four (4) being market rate units.
- The proposal creates mixed income housing and will bring more residents and foot traffic to the Findlay Market area, which will help to support the Market and small businesses in the area.

The Administration recommends approval of this Emergency Ordinance so that the Developer can close on the properties, meet their historic tax credit application deadline, and begin construction on the project as soon as possible.

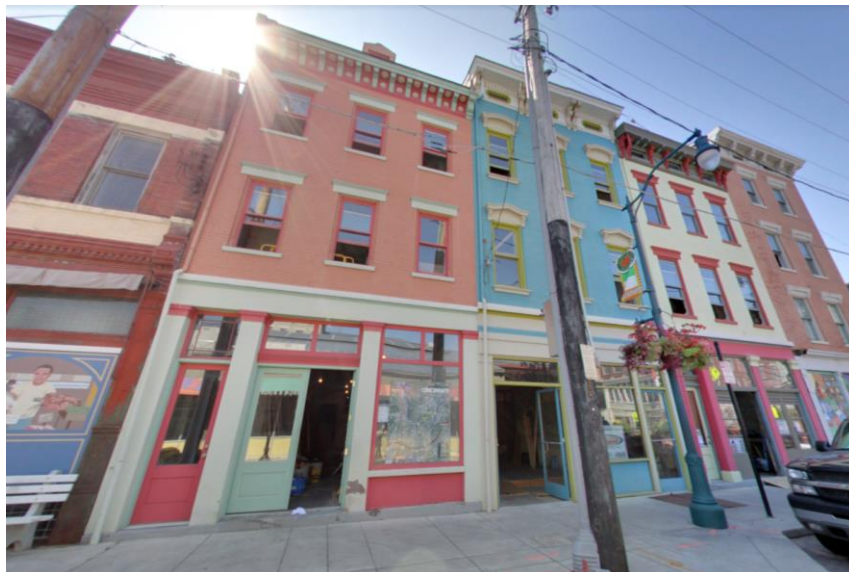
Attachment: Project Outline

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

# Project Outline

<u>Project Description Details</u>	<u>Explanation</u>
Project Name	129-131 W. Elder Street
Street Address	129-131 W. Elder Street
Property Condition	Two historic buildings that sit in Findlay Market; ground floor of 129 W. Elder St. is currently occupied by The Arepa Place and ground floor of 131 W. Elder St. is currently occupied by Maverick Chocolate; the upper floors are vacant and in disrepair
Neighborhood	Over-the-Rhine
Incentive Application Process	Request for Proposals and Commercial CRA – Downtown Streetcar Area
Recent or other projects by Developer	1714 Vine Street, KeyMark Phase I & II
Approval at Planning Commission/Neighborhood support	<ul style="list-style-type: none"> <li>- Approval of sale by City Planning Commission on 9/16/2022</li> <li>- Public engagement meeting held with OTR stakeholders, the Developer and City Planning on 9/6/2022</li> <li>- Written letters of support from OTRCC and CFFM</li> </ul>
Plan Cincinnati Goals	Achieves the Compete Initiative Area Goal 2 (pages 114-120), Live Area goal 3 by (pages 164-178), and Sustain Initiative Area Goal 2 (pages 193-198)

## Project Image



<b><u>Incentive Summary Category</u></b>	<b><u>Explanation</u></b>
Proposed Incentive	\$1.00 property sale to 8K Development Company, LLC
Additional Incentives	15-year, net 67% Commercial CRA tax abatement, with the possibility for 10-year historic extension (at the discretion of Council)
Construction Cost & Private investment committed	Project Costs <ul style="list-style-type: none"> <li>- \$1,056,840 in total project costs (\$880,600 in hard construction costs)</li> </ul> Financing Commitments <ul style="list-style-type: none"> <li>- \$191,840 in Developer equity</li> <li>- \$650,000 permanent loan from North Side Bank</li> <li>- \$215,000 in State Historic Tax Credit Equity</li> </ul>
Sq. Footage by Use	4,680 sf - residential
Number of units and rental ranges	10 one-bedroom units <ul style="list-style-type: none"> <li>- 3 affordable to 50% AMI (\$650/month)</li> <li>- 3 affordable to 60% AMI (\$750/month)</li> <li>- 4 at market rate (\$900/month)</li> </ul>
Jobs created/retained and payroll (living wage)	This project will not create any FTE positions
“But For”	The project, as presented with income restricted units, would not proceed without the proposed incentive package due to the Developer not receiving adequate returns until after Year 7.
Cash on Cash Return for developer (Market return between 8-12%, depends on investment risk)	Without Abatement (Year 5): 6% With Abatement (Year 5): 8%
LEED or other environmental build	Non-LEED
Neighborhood VTICA	No VTICA contribution
Total Public Benefit (Benefits Realized vs Taxes Forgone)	\$2.56 of new CPS/Income taxes for each \$1 forgone
Projected Income Tax Revenue	\$6,750
MBE/WBE Goals	SBE Goal of 30%
Transit Access/Walkability	The project is adjacent to Findlay Market-Elm, Findlay Market-Race, and Brewery District Streetcar stops; the project also sits along the 21, 64, 46, and 78 Metro bus routes

Geography	The project sits in an Opportunity Zone and the OTR-West End NRSA
Historic Preservation/Existing Building Renovation	This project will renovate the upper floors of two historic buildings, preserving and reactivating them for future use
Public Infrastructure Improvements	N/A

Rent	Affordable to Salary	City Jobs (Min Salary exceeds affordable salary)
\$650.00	\$26,000.00	Lifeguard, Laboratory Technician (Part-Time), Breast Feeding Peer Counselor (Part-Time), Parks/Recreation Program Leader (Part-Time)
\$900.00	\$36,000.00	Card Punch Operator, Custodian, Municipal Worker, Recreation Specialist (Part-Time)

AMI	1	2	3	4	5	6	7	8
30%	\$20,100	\$22,950	\$25,800	\$28,650	\$32,470	\$37,190	\$49,910	\$46,360
50%	\$33,450	\$38,200	\$43,000	\$47,750	\$51,600	\$55,400	\$49,250	\$63,050
60%	\$40,140	\$45,840	\$51,600	\$57,300	\$61,920	\$66,480	\$59,100	\$75,660
80%	\$53,520	\$61,120	\$68,800	\$76,400	\$82,560	\$88,640	\$78,800	\$100,880



**EMERGENCY**

**CHM**

**- 2023**

**AUTHORIZING** the City Manager to execute a *Property Sale and Development Agreement* with 8K Development Company, LLC for the sale of the upper levels of the City-owned building located at 129-131 W. Elder Street in the Over-the-Rhine neighborhood for residential redevelopment.

WHEREAS, the City owns the real property, including the building thereon, located at 129-131 W. Elder Street at Findlay Market in the Over-the-Rhine neighborhood, as more particularly depicted and described in the *Property Sale and Development Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (“Property”), which Property is under the management of the City’s Department of Community and Economic Development (“DCED”); and

WHEREAS, the City currently leases the Property to the Corporation for Findlay Market of Cincinnati (“CFFM”), which manages the Property for the City; and

WHEREAS, two commercial tenants presently occupy the Property’s street-level commercial spaces, and the upper levels of the building are vacant and in need of redevelopment; and

WHEREAS, 8K Development Company, LLC, an Ohio limited liability company (“Developer”), submitted a development proposal to redevelop the upper floors of the Property into residential use, which proposal the City Manager, in consultation with DCED, determined to be the most advantageous to the City and involves the subdivision of the Property into two parcels: (i) a residential air lot primarily comprised of the upper floors of the building (“Residential Air Lot”) to be sold to Developer for the construction of 10 residential multi-family dwelling units at an estimated cost of approximately \$1,056,840 (“Project”); and (ii) a commercial air lot, including the basement and any and all residual space and land rights not part of the Residential Air Lot to be retained by the City (leased and managed by CFFM); and

WHEREAS, Developer estimates that the Project will create approximately 12 temporary construction jobs and no full-time permanent jobs; and

WHEREAS, the City Manager, in consultation with DCED, has determined that the Residential Air Lot is not needed for a municipal purpose and that the conveyance to Developer of the Residential Air Lot is not adverse to the City’s retained interest in the Property; and

WHEREAS, the City’s Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Residential Air Lot is approximately \$100,000; however, the City desires to sell the Residential Air Lot for less than the fair market value, namely, for \$1.00 because the City will receive economic and non-economic benefits from the Project that equal or exceed the fair market value of the Residential Air Lot because the City anticipates that the Project will create new jobs, stimulate economic growth in the Over-the-Rhine neighborhood, will create additional housing in Cincinnati, and will contribute to the social and economic viability and stability of the Findlay Market area by restoring the vacant upper levels of the building to productive use; and

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

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

WHEREAS, the City has determined that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents and in accordance with the above-stated public purposes because the Project will restore the vacant upper levels of the building to productive use, create additional housing and employment opportunities, stimulate economic growth in the Findlay Market area, and help to revitalize the Over-the-Rhine neighborhood, all for the economic benefit of the City; 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, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City’s sale of the Residential Air Lot to Developer at its meeting on September 16, 2022; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Property Sale and Development Agreement* with 8K Development Company, LLC, an Ohio limited liability company (“Developer”), in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference (“Agreement”), pursuant to which the City will sell to

Developer an air lot located at 129-131 W. Elder Street in Over-the-Rhine, as more particularly detailed in the Agreement (“Residential Air Lot”).

Section 2. That the Residential Air Lot is not needed for a municipal purpose and that the conveyance to Developer of the Residential Air Lot is not adverse to the City’s retained interest in the building and property located at 129-131 W. Elder Street.

Section 3. That the City’s Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Residential Air Lot is approximately \$100,000; however, the City will sell the Residential Air Lot for less than the fair market value, namely, for \$1.00 because the City will receive economic and non-economic benefits from the Project that equal or exceed the fair market value of the Residential Air Lot because the City anticipates that the Project will create new jobs, stimulate economic growth in the Over-the-Rhine neighborhood, will create additional housing in Cincinnati, and will contribute to the social and economic viability and stability of the Findlay Market area by restoring the vacant upper levels of the building to productive use.

Section 4. That it is in the best interest of the City to eliminate competitive bidding in connection with the City’s sale of the Residential Air Lot because the City Manager, in consultation with the Department of Community and Economic Development, determined Developer’s proposal to be the most suitable and advantageous to the City.

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

Section 6. That the City’s Finance Director is authorized to transfer and appropriate such excess funds from the unappropriated surplus of Miscellaneous Permanent Improvement Fund 757 to capital improvement program project account no. 980x162xYY1641, “DCED Property Improvements,” in which “YY” represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 7. That Council authorizes the proper City officials to take all necessary and proper actions to fulfill the terms of the Agreement and this ordinance, including without limitation executing any and all ancillary agreements, deeds, plats, and other documents to facilitate all transactions contemplated by the Agreement.

Section 8. 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 City to do all things necessary to create the Residential Air Lot without delay to allow this construction-ready project to move forward so that the City may receive the economic and noneconomic benefits from the sale and development of the Residential Air Lot at the earliest possible time.

Passed: \_\_\_\_\_, 2023

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

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

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

**PROPERTY SALE AND DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI**

*and*

**8K Development Company, LLC**  
**("Developer")**

Project: 129 and 131 W. Elder Street

creation of 1st floor commercial lot at (to be retained by the City),  
creation of residential air lot for upper floors for sale and redevelopment as residential  
multifamily units

## PROPERTY SALE AND DEVELOPMENT AGREEMENT

THIS PROPERTY SALE AND DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, having an address of 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **8K Development Company, LLC**, an Ohio limited liability company, whose address for purposes of this Agreement is 60 E. McMicken Avenue, Cincinnati, Ohio 45202 (“**Developer**”).

### Recitals:

A. The City owns the land and two adjoining 4-story buildings thereon located at 129 W. Elder Street (the “**129 Building**”) and 131 W. Elder Street (the “**131 Building**”), more particularly identified as Hamilton County, Ohio Auditor’s Parcel ID No. 094-0008-0145, in Over-the-Rhine in Cincinnati as shown on Exhibit A (*Site Survey*) hereto (the “**Buildings**”), which are under the management and control of the City’s Department of Community and Economic Development (“**DCED**”).

B. Pursuant to a *Lease and Management Agreement* between the City and the Corporation for Findlay Market of Cincinnati, an Ohio non-profit corporation (“**CFFM**”), dated April 12, 2022 (the “**CFFM Lease & Management Agreement**”), the City leases to CFFM various properties at Findlay Market, including the Buildings for the management and operation thereof.

D. A commercial restaurant known as *The Arepa Place* currently occupies the first-floor commercial space of the 129 Building, and a commercial tenant known as *Maverick Chocolate* currently occupies the first-floor commercial space of the 131 Building, each under a license agreement between CFFM and the tenant (the “**Commercial Tenant License Agreements**” and the “**Commercial Tenants**”, respectively). The upper floors of the Buildings are currently vacant and need substantial renovation.

E. Pursuant to a Request for Proposals solicited by DCED, the City determined that Developer’s proposed redevelopment plan for the Buildings is the most advantageous to the City. Developer’s proposal is as follows (the “**Project**”):

- (i) *Pre-Closing Title & Survey Work*: Following the Effective Date, Developer shall engage [a] a title company to conduct a title examination to determine whether there are any liens or other encumbrances that may impair the proposed redevelopment of the Buildings; and [b] a professional surveyor to prepare proposed subdivision plats and any and all other engineering drawings and other documents as may be required by the City’s Department of City Planning and Engagement, the Hamilton County, Ohio Engineer, the Hamilton County, Ohio Auditor, and the Hamilton County, Ohio Recorder to subdivide Hamilton County, Ohio Auditor’s Parcel ID No. 094-0008-0145 into two lots (the “**Lots**”); namely:

- [x] One upper-level residential air lot comprising the upper floors of the Buildings, including access from the ground floor (the “**Residential Air Lot**”, and also the “**Property**”), to be sold by the City to Developer under this Agreement for redevelopment into 10 residential multi-family units of which Developer will lease and make affordable six residential dwelling units for a period of 15 years (the “**Affordability Period**”) to families earning between 50% to 60% of the area median income (“**AMI**”) as established by United States Department of Housing and Urban Development (“**HUD**”) for the Cincinnati metropolitan area, adjusted for household size, and as may be updated from time to time (the “**Affordable Units**”); and

[y] one street-level commercial lot (including a basement and any and all residual space and land rights not part of the Residential Air Lot) of the Buildings (the “**Commercial Air Lots**”) which will remain under the City’s ownership and which the parties anticipate will remain occupied by the Commercial Tenants under the terms of the Commercial Tenant License Agreements.

- (ii) *Declaration of Covenants, Easements, and Restrictions:* Upon the parties’ approval of title, the proposed subdivision plats, engineering drawings, and other documents prepared under subparagraph (i) above, the City, Developer and CFFM shall work jointly to prepare and mutually approve a proposed *Declaration of Covenants, Easements and Restrictions* (the “**Declaration**”) that will set forth the respective rights and obligations of the owner of the Residential Air Lot and the Commercial Lot, including without limitation: [a] creating any necessary cross easements (including, if applicable, easements that may be necessary through the Commercial Lot in order for the owner of the Residential Air Lot to access mechanicals and utilities located in the basements of the Commercial Lots that provide service to the Residential Air Lot); and [b] self-help rights in favor of the owner of the Commercial Lot if the owner of the Residential Air Lot fails to fulfill their maintenance and repair obligations under the Declaration (e.g., roof or structural repairs) to the detriment of the Commercial Lot. (The parties acknowledge that the Declaration will not allocate off-street parking space between the Lots because there is no such off-site parking space behind the Buildings.);
- (iii) *Creation of Lots:* Upon the parties’ approval of the proposed Declaration, the parties shall take all steps necessary to [a] subdivide Hamilton County, Ohio Auditor’s Parcel ID No. 094-0008-0145 into the Lots as aforesaid, and [b] record the Declaration in the Hamilton County, Ohio Recorder’s office;
- (iv) *Closing:* Upon the creation of the Lots, the City shall transfer title to the Residential Air Lot to Developer (the “**Closing**”), and the City shall retain ownership of the Commercial Lot; and
- (v) *Construction:* Following the Closing, Developer shall [a] perform all work required to functionally separate the Residential Air Lot from the Commercial Lot (including, without limitation, performing all fire code separation work required by the City’s Department of Buildings and Inspections as a condition of receiving a certificate of occupancy for the Residential Air Lot), [b] construct the 10 residential multi-family dwelling units within the Residential Air Lot, and [c] make certain other improvements to the Buildings (collectively, the “**Improvements**”); with a target construction completion date (as evidenced by a certificate of occupancy for the residential improvements) no later than 24 months following the Effective Date.

F. Developer anticipates that the hard and soft costs associated with creating the Lots and constructing the Improvements (including the purchase price) will be approximately \$1,056,840 as shown on Exhibit B (*Scope of Work; Preliminary Budget; Source of Funds*) hereto.

G. Developer anticipates that the construction of the Improvements will create approximately 12 temporary construction jobs and 0 permanent jobs.

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

I. 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.

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

K. The City's Real Estate Services Division has determined that the fair market value of the Residential Air Lot, as determined by a professional appraisal, is \$100,000; however, the City is agreeable to convey the Property for less than fair market value, namely, for \$1.00 because the City will receive economic and non-economic benefits from the Project that equal or exceed the fair market value of the Property because it is anticipated that the Project will create new jobs, stimulate economic growth in the Over-the-Rhine neighborhood, will create additional housing in Cincinnati and is consistent with the City's objective of creating good quality housing options within the Over-the-Rhine neighborhood, thereby contributing to the social and economic viability and stability of the neighborhood and restore the Property to productive use.

L. The City believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements. Accordingly, the City is cooperating to facilitate a real property tax abatement for the Project under a *Community Reinvestment Area Tax Exemption Agreement* (the "**CRA Agreement**"), subject to passage by City Council of a separate ordinance authorizing such abatement.

M. The City has determined that eliminating competitive bidding in connection with the City's sale of the Property is in the best interest of the City because the City issued a request for proposals to solicit offers to develop the Property, and the City finds that Developer's development proposal is the most suitable and advantageous to the City.

N. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Property to Developer at its meeting on September 16, 2022.

O. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. \_\_\_\_-2023, passed by City Council on \_\_\_\_\_, 2023.

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

**1. Due Diligence Period.**

(A) Due Diligence Materials. Following the Effective Date, Developer shall prepare and deliver the following items to DCED for its review and approval (the "**Due Diligence Materials**"):

- (i) Title: a recent 40-year title exam for the Buildings, prepared by a reputable title company acceptable to the City;
- (ii) Subdivision Plat: a proposed subdivision plat and, if needed, engineering drawings, to create the Residential Air Lot and Commercial Lot, prepared by a reputable surveyor or engineering firm acceptable to the City;
- (iii) Plans and Specifications: plans and specifications for the Improvements;



- (iv) Construction Schedule: The proposed construction schedule for the Project;
- (v) Building Permit: evidence that Developer has obtained or is ready to obtain a building permit issued by the City's Department of Buildings and Inspections for the construction of the Improvements (including a Certificate of Appropriateness by the Historic Conservation Board and, if required, a Certificate of Compliance by the Urban Conservator);
- (vi) Financing, Tax Credits, and Incentives: Evidence of a satisfactory loan commitment or letter from Developer's lender evidencing that Developer has secured or will be able to secure all financing necessary to complete the Project. Developer having satisfied itself that it will qualify for and ultimately obtain tax credits, abatements, and/or other incentives and financing to support the Project, including but not limited to, the CRA Agreement;
- (vii) Appraisal: an appraisal showing the prospective "as built" fair market value of the Residential Air Lot following renovation; and
- (viii) Other Information: such other information and documents pertaining to Developer or the Project as the City may reasonably require.

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

(B) Right to Terminate Agreement Upon Expiration of Due Diligence Period (6 months). The parties acknowledge that Developer intends to conduct various due diligence investigations with respect to the Project, including, without limitation, investigations pertaining to title, survey, physical condition, environmental, zoning, utilities, and permitting requirements. Notwithstanding anything in this Agreement to the contrary, if, after exercising good faith efforts, Developer is not satisfied with the results of its due diligence investigations, or if the Due Diligence Materials have not been finalized and approved by both parties, in either case within **six (6) months** after the Effective Date (the "**Due Diligence Period**"), the parties shall each have the right to terminate this Agreement by delivering a written notice of termination to the other party upon the expiration of the Due Diligence Period, whereupon neither party shall thereafter have any rights or obligations hereunder. During the Due Diligence Period and at Developer's request, the City shall give Developer the right to enter upon the Property from time to time in connection with its due diligence investigations by executing a written right-of-entry. Developer shall complete all its due diligence investigations at no cost to the City.

(C) Right to Terminate if City is Unable to Remove Property from CFFM Lease and Management Agreement. Notwithstanding anything in this Agreement to the contrary, the parties' obligations under this Agreement shall be contingent upon the City's ability to remove the Property from the CFFM Lease and Management Agreement, pursuant to which the City has the right to remove the Residential Air Lot from the terms of the CFFM Lease and Management Agreement (including without limitation causing CFFM to (i) terminate any existing license agreements or other agreements with third parties affecting the Residential Air Lot, and (ii) amend its existing Commercial Tenant License Agreements with the Commercial Tenants, if necessary, to address any impact of the proposed redevelopment on the Commercial Tenant License Agreements). The City shall use reasonable efforts to provide such notice to CFFM during the Due Diligence Period. If the City has not provided such written notice to CFFM or CFFM has failed to wind up all operational matters pertaining to the Property before the expiration of the Due Diligence Period, either party may terminate this Agreement by giving written notice thereof to the other party at any time thereafter (but prior to the date that the City notifies Developer that the City and CFFM have removed the Property from the CFFM Lease and Management Agreement).

(D) Copies of Due Diligence Materials to be Provided to City. Without limitation of Developer's other obligations under this Agreement, periodically throughout the Due Diligence Period and as such reports and materials are obtained by Developer, Developer, at no cost to the City, shall provide the City's Department of Community and Economic Development with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer during the Due Diligence Period that pertain to the Project.

## **2. Real Estate Closing; Reconveyance for Failure to Timely Commence Construction.**

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

(B) Closing Date. Provided this Agreement has not been terminated under paragraphs 1(B) or 1(C) above, the Closing shall take place **thirty (30) days** after the expiration of the Due Diligence Period or on such earlier or later date as the parties may agree upon.

(C) Closing Conditions. The Closing shall not occur unless and until the following conditions have been satisfied (the "**Closing Conditions**"); *provided, however*, that if the City, in its sole discretion, determines that one or more of the Closing Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Quitclaim Deed to Developer or handle such Conditions post-Closing. Developer shall perform all work and investigations and obtain and prepare all necessary documents to satisfy the Conditions at no cost to the City. In its sole discretion, the City may waive one or more of the Closing Conditions.

- (i) Due Diligence Materials: Each party must be satisfied with the various Due Diligence Materials and other reports related to the Project, as described in Section 1 above;
- (ii) Inspections and Utilities: Developer's approval (or waiver) of [x] inspections of the Property, including without limitation environmental assessments and soil assessments, to the extent Developer, at its option, elects to obtain such inspections, [y] MSD/GCWW: Developer shall (i) have submitted a Request for Availability for Sewer Service to the Metropolitan Sewer District of Greater Cincinnati and be complying with all related City requirements, and (ii) be satisfactorily coordinating the construction of the Project with the City's Greater Cincinnati Water Works and Division Stormwater Management Utility and complying with applicable requirements with respect to all matters pertaining to utility service for the Property;
- (iii) Project Completion: Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;
- (iv) Plats, Legal Descriptions, and Deeds: Developer shall have provided the City with all plats and legal descriptions as required by DOTE, the Department of City Planning and Engagement, and the Hamilton County, Ohio Auditor, Engineer, and Recorder in connection with the City's sale of the Property, including a subdivision plat new legal description of the Property;

(v) Continued Compliance: Developer is in compliance with all obligations under this Agreement and that all representations made by Developer, as applicable, under this Agreement or the CRA Agreement continue to be true and accurate.

(vi) Coordinated Report Conditions (CR #03-2022) :

(a) GCWW:

(1) There are two existing water service line servicing these properties: 3/4", H-305704 (131 W Elder St.) and 1.5", H-309503 (129 W. Elder St.).

(2) Air Lots necessitate the Owner(s)/Developer(s) to prepare and record a Declaration of Easement document between all the property owners. GCWW requires a Recorder's office stamped copy of the Declaration of Easement.

(3) In order to get water service, the Owners/Developers will also need to process a request for an Air Lot Covenant using the Property Information form: Requirement for Water Service to Air Lots/Vertical Parcels. This process can begin at any point prior to needing water service.

(4) Once the Property Information Form is completed by the Owner/Developer, the form is submitted to GCWW to begin preparation of the Water Service Covenant document.

(5) Signatories on the covenant include the GCWW Director, GCWW Attorney and the Owners/Developers. The Owners/Developer will need to have the finalized covenant recorded at the Hamilton County Recorder's Office and then send a stamped copy to GCWW. After GCWW receives the stamped copy of the covenant, this restriction will be lifted from the Branch Sale process.

(6) A Grant of Easement and Water Service Covenant is required and must be recorded so that all created parcels will have access to a public water main. The Grant of Easement and Water Service Covenant must include language on how the water system will function within the building, including language regarding the repair, maintenance, and replacement of the service branches.

(7) GCWW must review and approve the Grant of Easement and Water Service Covenant prior to the sale of water service.

(8) If in the future, the petitioner or their agents determine the existing water system does not meet their fire and/or domestic water demands, then the petitioner may need to upgrade the water main(s) in their area to meet their fixture water demands. GCWW approval of this Coordinated Report for the subject sale in no way relieves the petitioner 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 the petitioner and not at the expense of GCWW.

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

(b) Department of City Planning and Engagement:

(1) Developer should make an appointment with the Urban Conservator for evaluation of the proposed exterior changes prior to sale: 513-352-4848. If the project potentially includes the significant rear addition or other significant exterior alterations, we will request that the project be granted a Certificate of Appropriateness from the Historic Conservation Board prior to the sale of property. If no COA is sought prior to closing, the City should stipulate with the sale that the buyer cannot infer that the City must approve any and all exterior changes to the building, regardless of whether such an addition is in keeping with the district guidelines

(2) If residential is desired on upper floors, the base zoning of CC-P would permit up to 6 residential units over both addresses as the addresses have been consolidated into one parcel. Any residential units in excess of 6 units would be required to get a Density Variance from the Historic Conservation Board. Applicant is encouraged to consult with Urban Conservator on desired uses of upper floors to determine their compliance with the Zoning Code.

(c) Buildings and Inspections:

(1) Water supplies may be inadequate in this alley for enhanced fire suppression, triggered by potential redevelopment/change of occupancy of the site.

(2) Any alterations triggering ADA compliance should be accomplished within the perimeter of property and not within the right-of-way.

(d) Altafiber: Altafiber has underground utility facilities in the area. Such facilities must remain in place, in service, and able to be accessed. Any damage done to the facilities or any work done to relocate the facilities as a result of this sale will be handled entirely at Developer's expense.

(e) MSD: As a reminder and if not already submitted, the MSDGC Request for Availability for Sewer Service (RASS) will be required by the project for a future development or redevelopment. The MSDGC RASS will determine the availability of a sewer and outline any additional MSDGC project requirements that could impact a project schedule if not considered, such as the need to obtain any MSDGC tap permits, easements, Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSDGC, sewer inspection scheduling, project on-site separation of flow requirements, MSDGC Excavation/Fill permitting and bonding, MSDGC detention requirements per Section 303 of the MSDGC Rules and Regulations, need for a grease interception system, and/or a reminder for the project to coordinate with City of Cincinnati Stormwater Management Utility of the Department of the Greater Cincinnati Waterworks for their specific additional detailed storm water, storm water detention, and flood plain requirements

(D) Right to Terminate. If the Closing Conditions have not been satisfied or waived and the Closing has not occurred by **12 months** from the date that Council authorized the execution of this Agreement, then the City or Developer shall have the right to terminate this Agreement by giving written notice thereof to the other, whereupon this Agreement and all rights and obligations of the parties hereunder shall immediately terminate.

(E) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all its right, title, and interest in and to the Property to Developer by Quitclaim Deed in the form of Exhibit C (Quitclaim Deed) hereto (the "**City's Deed**"). Developer shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing such that the City shall

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

(F) Re-conveyance of Property to City for Failure to Timely Commence Construction. Developer acknowledges that Developer's agreement to timely commence and complete construction, which will provide economic benefits to the City, is of utmost importance to the City. Accordingly, if Developer fails to obtain a building permit and commence on-site construction at the Property within **180 days** after the Closing, then, notwithstanding anything to the contrary in this Agreement, Developer shall re-convey the Property to the City or its designee, by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence immediately prior to the date and time of the Closing, and in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Property) (the "**Re-conveyance**"), whereupon the City shall refund the Purchase Price to Developer (minus any and all out-of-pocket costs incurred by the City in connection with the Closing, including without limitation the fee payable to the City's Real Estate Services Division for services provided in connection with the Closing). Real estate taxes and assessments shall be prorated at Closing in accordance with local custom. Developer shall pay any and all closing costs associated with the Re-conveyance such that the City shall not be required to come up with any funds for the Re-conveyance. The obligation to re-convey the Property to the City shall be set forth in the City's Deed.

### **3. Construction.**

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

(B) Construction; No Disruption of Commercial Tenant. Following the Closing, Developer shall commence and complete the renovation of the Property. Developer shall not transfer title to the Property to a third party prior to substantial completion of construction, and any attempt to do so shall constitute a default under this Agreement. During construction, Developer shall take all reasonable steps to avoid disrupting the Commercial Tenants' occupancy of the Commercial Lot.

(C) Applicable Laws. Developer shall obtain all necessary permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements applicable to the Project, including without limitation those set forth in Exhibit D hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever permits and other approvals from the Department of City Planning and Engagement, the Department of Buildings and Inspections, the Department of Transportation and Engineering ("**DOT**"), Metropolitan Sewer District ("**MSD**"), Greater Cincinnati Water Works ("**GCWW**"), Stormwater Management Utility ("**SMU**"), other City departments, City Planning Commission, or Cincinnati City Council that may be required in connection with the Project.

(D) Inspection of Work. During construction, the City, its employees, and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations hereunder.

(E) Mechanics Liens. Developer shall not permit any mechanics' or other similar liens to remain on the Property during construction.

(F) Project Information. During construction, Developer shall provide the City with such additional pertinent information pertaining to the Project as the City may reasonably request.

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

(H) Affordability Requirements. Following construction completion of the Residential Air Lots, as evidenced by a certificate of occupancy issued by the City's Department of Buildings and Inspections, Developer shall ensure that the Affordable Units of the Residential Air Lot are rented in accordance with the requirements set forth in Exhibit E (Affordability Requirements) hereto (the "**Affordability Requirements**") for the Affordability Period.

#### 4. Insurance; Indemnity.

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

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

(C) General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Developer, its agents, employees,

contractors, subcontractors, licensees, invitees or anyone else acting at its request in connection with each such Project.

**5. Casualty.** If the Property is damaged or destroyed by fire or other casualty during construction, Developer shall cause the damage to be repaired, as expeditiously as possible, and to the extent practicable, to substantially the same condition that existed immediately prior to such occurrence. If the insurance proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all reconstruction in accordance with the applicable requirements set forth herein. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the damage is being repaired.

**6. Default; Remedies.**

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

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

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

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

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) terminate this Agreement by giving Developer written notice thereof and, without limitation of its other rights and remedies, and with or without terminating this Agreement, demand repayment of any and all loan or grant funds previously disbursed by the City under this Agreement, (ii) take such actions in the way of “self-help” as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity. Developer shall be liable for all costs and damages, including without limitation attorneys’ fees, suffered, or incurred by the City as a result of a default of Developer under this Agreement or the City’s enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

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

To the City:  
City of Cincinnati  
Dept. of Community & Economic Development  
805 Central Avenue, Suite 700  
Cincinnati, OH 45202

To Developer:  
8K Development Company, LLC  
60 E. McMicken Avenue  
Cincinnati, OH 45202

If Developer sends a notice to the City alleging that the City is in default under this Agreement, it 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.

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

(i) Developer is duly organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws 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, 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 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 Project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(vii) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer (nor its affiliates, if applicable) owes any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

**9. Reporting Requirements.**



(A) Submission of Records and Reports; Records Retention. Until such time as the Affordability Period has expired, Developer shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Developer, the Project, or this Agreement, including without limitation audited financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require.

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

## **10. General Provisions.**

(A) Assignment. Developer shall not assign its rights or interests under this Agreement or any ancillary agreements with the City without the prior written consent of the City; provided that a collateral assignment of its rights under this Agreement to its lender for the Project (and subsequent assignments by such lender) shall be permitted. Developer's assignment of its rights or interests under this Agreement to an affiliate of Developer that is owned or controlled by Developer shall be subject to the City's prior written approval, not to be unreasonably withheld; however, no such assignment between Developer and its affiliated assignee shall release Developer from its obligations to the City under this Agreement.

(B) Entire Agreement; Conflicting Provisions. This Agreement (including the exhibits hereto) and the other agreements referred to herein 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. If any of the provisions of this Agreement purporting to describe specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

(C) Amendments. This Agreement may be amended only by a written amendment signed by all 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. Except as otherwise provided herein, no third-party beneficiary rights are created by this Agreement.

(K) No Brokers. The parties represent 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 or the sale of the Property.

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

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

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

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

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

11. **Exhibits**. The following exhibits are attached to this Agreement and made a part hereof:  
Exhibit A - *Site Survey*  
Exhibit B - *Scope of Work; Preliminary Budget; Source of Funds*  
Exhibit C - *Quitclaim Deed*  
Exhibit D - *Additional Requirements*  
Exhibit E - *Affordability Requirements*

SIGNATURE PAGE FOLLOWS

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

**DEVELOPER:**

**8K DEVELOPMENT COMPANY, LLC,**  
an Ohio limited liability company

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

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

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

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

*[ Remainder of Page Intentionally Blank; City Signature Page Follows ]*

**CITY OF CINCINNATI**

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

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

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

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

Recommended by:

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

Approved as to Form:

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

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

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

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

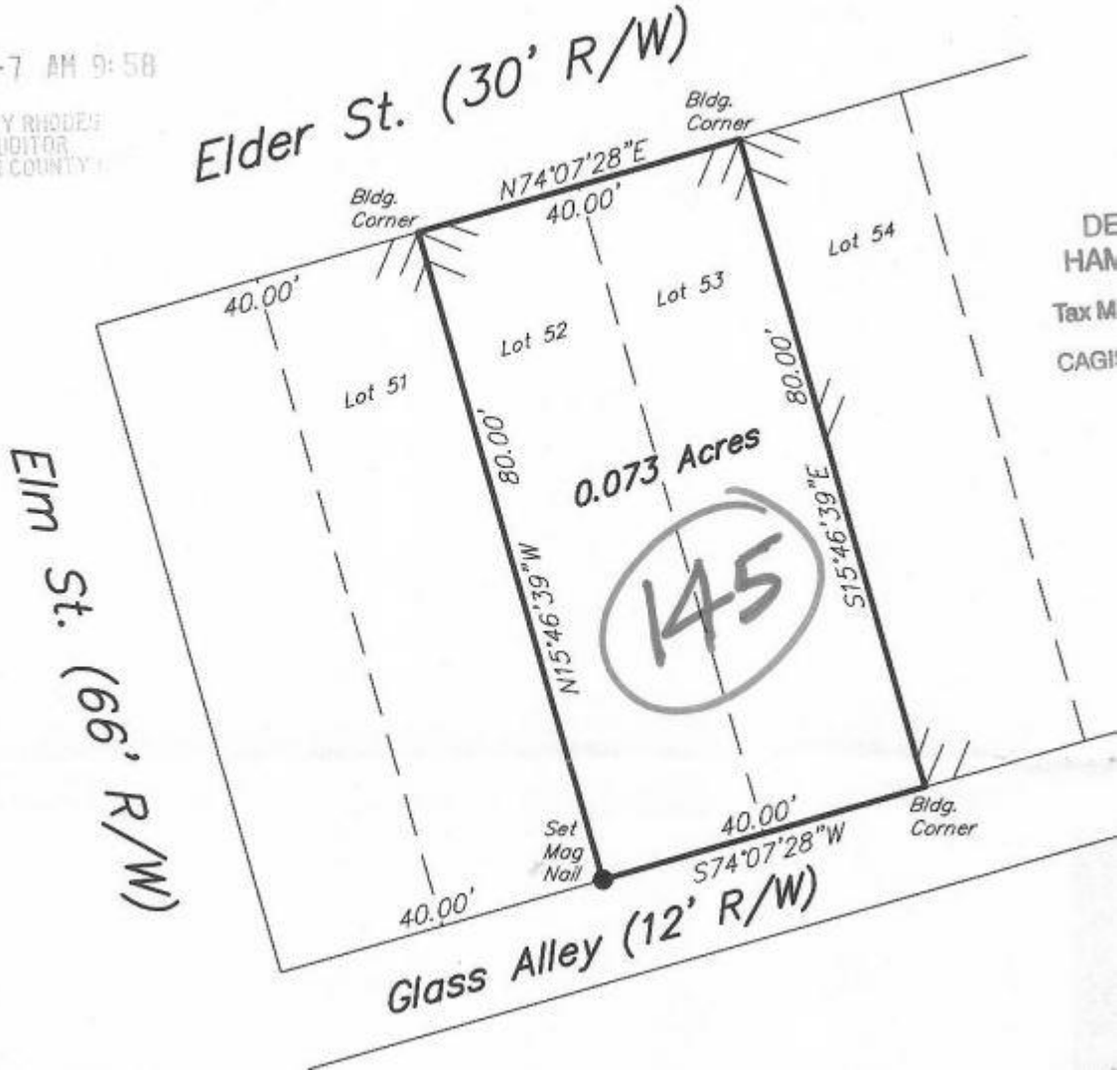
By: \_\_\_\_\_  
Karen Alder, City Finance Director

**EXHIBIT A**

to Property Sale and Development Agreement  
Site Survey

113MAY-7 AM 9:58

DUSTY RHODES  
AUDITOR  
HAMILTON COUNTY



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**EXHIBIT B**

to Property Sale and Development Agreement

***Scope of Work; Preliminary Budget; Source of Funds***

**I. SCOPE OF WORK**

Developer will be redeveloping the Property into 10 new residential rental units.

**II. BUDGET, SOURCES & USES**

a. Sources of Funds

Bank Loan	\$650,000
Developer Equity	\$191,840
State Historic Tax Credit Equity	\$215,000
<b>TOTAL SOURCES</b>	<b>\$1,056,840</b>

b. Uses of Funds

<b>ITEM</b>	<b>COST</b>
<b>ACQUISITION</b>	
Building Acquisition	\$1
<b>HARD COSTS</b>	
Rehabilitation	\$880,600
<b>SOFT COSTS</b>	
Architect & Engineering	\$29,500
Developer Fee	\$73,733
Environmental	\$3,850
Survey	\$850
Property Taxes	\$7,650
Construction Insurance	\$5,000
<b>CONSTRUCTION FINANCE</b>	
Title and Recording	\$5,656
Construction Interest	\$32,500
Appraisal	\$2,500
<b>CONTINGENCIES</b>	
Hard Cost Contingency	\$15,000
<b>TOTAL DEVELOPMENT COST</b>	<b>\$1,056,840</b>

**EXHIBIT C**

to Property Sale and Development Agreement

QUITCLAIM DEED

*SEE ATTACHED*

-----  
[SPACE ABOVE FOR RECORDER'S OFFICE]

### QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **8K Development Company, LLC**, as tenants in common, whose address is 60 E. McMicken Avenue, Cincinnati, Ohio 45202 ("**Grantee**"), all of the City's right, title and interest in and to the real property described on Exhibit A (Legal Description) hereto (the "**Property**").

Property Address: 129 & 131 W. Elder St, Cincinnati, OH 45202 (newly-created residential air lots)  
Auditor's parcel No.: 094-0008-[\_\_\_\_]  
Prior Instrument: OR [\_\_\_\_], Page [\_\_\_\_], Hamilton County, Ohio Records

Re-conveyance of Property to City for Failure to Timely Commence Construction. The City and Grantee are parties to a *Property Sale and Development Agreement* dated \_\_\_\_\_, 2023 (the "**Development Agreement**"). As provided in the Development Agreement, if Grantee fails to obtain a building permit and commence on-site construction at the Property on or before \_\_\_\_\_, 2023, Grantee shall re-convey the Property to the City free and clear of all liens and encumbrances, as more particularly described in the Development Agreement. At such time as Grantee is no longer required to re-convey the Property to the City under the Development Agreement, the City shall execute and deliver to Grantee a recordable release, for recording in the Hamilton County Recorder's office, at Grantee's cost.

This conveyance was authorized by Ordinance No. \_\_\_\_-2023, passed by Cincinnati City Council on \_\_\_\_\_, 2023.

[ Signature and Acknowledgement Page Follows ]



Executed on the date of acknowledgment below.

**CITY OF CINCINNATI**

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

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

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

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

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the corporation. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereto.

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

Approved as to Form:

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

This instrument prepared by:

City of Cincinnati Law Department  
801 Plum Street  
Cincinnati, OH 45202

Exhibits:  
Exhibit A – *Legal Description*

EXHIBIT A  
to Quitclaim Deed

*LEGAL DESCRIPTION*

**LEGAL DESCRIPTION  
129-131 WEST ELDER STREET  
RESIDENTIAL AIR LOT—AIR LOT [\_\_\_]**

Situate in Section 13, Town 3, Fractional Range 2, Millcreek Township, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Being all of Air Lot [\_\_\_] of the [\_\_\_\_\_] Subdivision as recorded in Plat Book [\_\_\_], Page [\_\_\_], Hamilton County, Ohio Recorder's Office.

Being subject to all easements, reservations, conditions, and restrictions of record.

## EXHIBIT D

to Property Sale and Development Agreement

### *Additional Requirements*

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

This Exhibit serves two functions:

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

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

(ii) Affirmatively Imposing Contractual Obligations.

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

(A) Construction Workforce.

(i) Applicability.

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

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

(ii) Requirement.

In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as

defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "**Construction Workforce Goals**").

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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

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

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

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

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

- (1) “Bid” means an offer in response to an invitation for bids to provide construction work.
- (2) “Invitation to Bid” means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.
- (3) “Trade Craft” means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.
- (4) “Public Notification” means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the “scope of work” and any other information reasonably necessary for the

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

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

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

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

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

(F) Small Business Enterprise Program.

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

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

(1) Including qualified SBEs on solicitation lists.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to

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

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

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

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

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

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

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

(G) Equal Employment Opportunity.

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

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

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all any prevailing wage requirements that may be applicable to the Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such

payments within twenty (20) days of demand therefor. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage Determination) hereto.

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

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

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

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

(M) Wage Enforcement.

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

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

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

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or



Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

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

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

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

respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

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

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

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

Addendum I to Additional Requirements Exhibit

*City's Prevailing Wage Determination*

INTENTIONALLY OMITTED

**EXHIBIT E**  
to Property Sale Development Agreement  
*Affordability Requirements*

Following construction completion of the Residential Air Lots, as evidenced by a certificate of occupancy issued by the City's Department of Buildings and Inspections for the Residential Air Lots, and ending on the fifteenth (15<sup>th</sup>) anniversary thereof (the "**Affordability Period**"), Developer shall rent the Affordable Units or cause the Affordable Units to be rented on the Property in accordance with the requirements below. For the purposes of this Agreement, "**Monthly Rent**" shall mean the cumulative monthly amount that Developer charges to a tenant for residing in an Affordable Unit, including but not limited to any and all fees or other expenses paid by Developer and charged to a tenant on a monthly or annual basis. The Monthly Rent shall also include any amounts paid to Developer by third-parties or organizations on behalf of the tenant in exchange for tenant's occupancy of the subject Affordable Unit.

**I. Rent and Income Limits.**

A. 50% AMI or Below (three units). Developer, its successors, and assigns shall rent three (3) Affordable Units or cause three Affordable Units to be rented to tenants with an annual household income equal to or below 50% AMI, as established from time to time by HUD for the Cincinnati Metropolitan Area and based on the number of persons in the household ("**50% AMI Qualified Tenants**"). Developer, its successors, and assigns shall not charge a 50% AMI Qualified Tenant Monthly Rent for an Affordable Unit in an amount that exceeds the annual Low-Income Housing Tax Credit Rent and Income Rates for 50%, as published by the Ohio Housing Finance Agency, which rent limits may be adjusted from time to time, including adjustments for the number of bedrooms in the dwelling unit (the "**50% AMI Affordability Requirement**"). Developer shall ensure that three Affordable Units are rented to 50% AMI Qualified Tenants in compliance with the 50% AMI Affordability Requirement at the initial lease-up of the Property. If a 50% AMI Qualified Tenant's household income increases to an amount that exceeds the 50% AMI limit during the term of their lease, such increase in household income shall not prohibit Developer from extending or otherwise renewing the term of the tenant's lease agreement, so long as the tenant was a 50% AMI Qualified Tenant upon execution of their initial lease term.

B. 60% AMI or Below (three units). Developer, its successors, and assigns shall rent three (3) Affordable Units or cause three Affordable Units to be rented to tenants with an annual household income equal to or below 60% AMI, as established from time to time by HUD and based on the number of persons in the household ("**60% AMI Qualified Tenants**"). Developer, its successors, and assigns shall not charge a 60% AMI Qualified Tenant Monthly Rent for an Affordable Unit in an amount that exceeds the Low-Income Housing Tax Credit Rent and Income Rates for 60%, as published by the Ohio Housing Finance Agency, which rent limits may be adjusted from time to time, including adjustments for the number of bedrooms in the dwelling unit (the "**60% AMI Affordability Requirement**"). Developer shall ensure that three Affordable Units are rented to 60% AMI Qualified Tenants in compliance with the 60% AMI Affordability Requirement at the initial lease-up of the Property. If a 60% AMI Qualified Tenant's household income increases to an amount that exceeds the 60% AMI limit during the term of their lease, such increase in household income shall not prohibit Developer from extending or otherwise renewing the term of the tenant's lease agreement, so long as the tenant was a 60% AMI Qualified Tenant upon execution of their initial lease term.

**II. Documentation.** Pursuant to Section 9 of the Agreement, from the initial lease-up through the expiration of the Affordability Period, Developer shall collect, maintain, and furnish to the City upon the City's request such financial, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to the Project, this Agreement, and the Affordable Units including without limitation tenant household size, household income, and additional information pertinent to the determination of compliance with the affordability requirements and the Affordable Units.



March 8, 2023

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

**From:** Sheryl M.M. Long, City Manager

202300766

**Subject: Emergency Ordinance – Approving And Authorizing CRA Tax Exemption Agreement with Moerlein Property LLC**

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Attached is an Emergency Ordinance captioned:

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Moerlein Properties LLC, thereby authorizing a 12-year tax exemption for 100% of the value of improvements made to real property located at 115-125 W. McMillan Avenue and 124-142 Lyon Street in the CUF neighborhood of Cincinnati, in connection with the construction of a mixed-use development comprised of a parking garage, approximately 5,000 square feet of commercial space, and approximately 263,000 square feet of residential space, consisting of approximately 103 units, at a total construction cost of approximately \$33,000,000

**BACKGROUND/CURRENT CONDITIONS**

Moerlein Properties, LLC plans to construct a new building on the properties located at 115-125 W McMillan Avenue and 124-142 Lyon Street in the CUF neighborhood. The property currently consists of six vacant multifamily buildings and two surface parking lots.

**DEVELOPER INFORMATION**

Moerlein Properties, LLC is affiliated with Hallmark Communities. Hallmark Communities primarily develops low and mid-rise multi-family residential and student housing communities. They have experience with the construction of student housing throughout the region.

**RECOMMENDATION**

The Administration recommends approval of this Emergency Ordinance. This is an Emergency Ordinance because the developer is on a tight construction schedule to have the project completed by the start of the 2024 Fall semester.

Attachment: Project Outline

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

# Project Outline

<u>Project Description Details</u>	<u>Explanation</u>
Project Name	Gateway Lofts CUF
Street Address	115-125 W McMillan Ave & 124-142 Lyon St
Property Condition	Six vacant multi-family buildings; Developer will acquire the buildings in 2023 upon closing of financing, in advance of CRA execution
Neighborhood	CUF
Incentive Application Process	Commercial CRA – Neighborhood VTICA (Non-LEED)
Recent or other projects by Developer	University Edge, Summit at Choates Run (Athens, OH), Marina Lofts (Toledo, OH) Gateway Lofts (Centerville, OH)
Approval at planning commission/Neighborhood support	Planning Commission N/A. Received letter of support from Clifton Heights CURC, CUF Neighborhood Association, and Clifton Heights Business Association.
Plan Cincinnati Goals	Achieves the Compete Initiative Area Goal 2 (pages 114-120) and Live Initiative Area Goal 2 and 3 (pages 157-178) and of Plan Cincinnati

## Project Image



<b><u>Incentive Summary Category</u></b>	<b><u>Explanation</u></b>
Abatement Term and amount	12-year, net 52%
Construction Cost & Private investment committed	Estimated \$33 million construction cost at with an approximate \$50 million total development cost of which approximately \$40 million is proposed to be privately financed with the balance anticipated to coming from developer equity.
Sq. Footage by Use	263,000 sf – residential 5,000 sf - commercial
Number of units and rental ranges	103 residential units at market rate rents: 1 BR / 1 BA \$1,100 2 BR / 2 BA \$2,000 3 BR / 3 BA \$2,850 4 BR / 4 BA \$3,600 5 BR / 5 BA \$4,500
Jobs created/retained and payroll (living wage)	Projected to create 4 FTE positions at \$300,000 in annual payroll (avg. of \$75,000 annually per job)
“But For”	This project as presented would not receive a market rate of return even with the tax abatement. The tax abatement allows for a better rate of return.
Cash on Cash Return for developer (Market return between 8-12%, depends on investment risk)	Without Abatement: Year 5: estimated at 3% (stabilized vacancy) With Abatement: Year 5: estimated at 5% (stabilized vacancy)
LEED or other environmental build	Non-LEED
Neighborhood VTICA	Neighborhood VTICA – 15%
Total Public Benefit (Benefits Realized vs Taxes Forgone)	Estimated \$1.02 of new CPS/VTICA/Income taxes for each \$1 forgone
Projected Income Tax Revenue	\$368,325
MBE/WBE Goals	17% MBE & 10% WBE
Transit Access/Walkability	Sits along Metro Bus Route 31 and is only a block away from Routes 46 and 78; also sits in the Clifton Heights Business District
Geography	Located one block south of the University of Cincinnati campus boundary.
Historic Preservation/Existing Building Renovation	N/A
Public Infrastructure Improvements	N/A



Rent	Affordable to Salary	City Jobs (Min Salary exceeds affordable salary)
\$1,100	\$44,000	Firefighter/Paramedic 1; Fleet Services Supervisor; Parking Services Supervisor; Casework Associate; Diesel Mechanic; Housing Services Coordinator; Pool Manager; Surveyor
\$2,000	\$80,000	Nursing Supervisor; Senior Building Plans Examiner; Supervisor of Urban Forestry; Engineering Geologist; Risk Manager; City Purchasing Agent; Paramedic Training Officer
\$2,850	\$114,000	Mayor; Fire District Chief; Police Captain; Sewers Director; Retirement Director; Finance Director; Law Chief of Staff
\$3,600	\$144,000	Assistant Police Chief; Public Health Practitioner; Dentist; Director of Water and Sewers
\$4,500	\$180,000	Exceeds salary of Most Department Directors

*\* DCED anticipates that all residential units within this project will be rented to university students and the rent will likely exceed 30% of their income as a student. Multiple students will likely split the larger units but the chart above assumes affordability to a family and the associated job it would be affordable to for the entire unit.*

AMI	1	2	3	4	5	6	7	8
30%	\$20,100	\$22,950	\$25,800	\$28,650	\$32,470	\$37,190	\$49,910	\$46,360
50%	\$33,450	\$38,200	\$43,000	\$47,750	\$51,600	\$55,400	\$49,250	\$63,050
60%	\$40,140	\$45,840	\$51,600	\$57,300	\$61,920	\$66,480	\$59,100	\$75,660
80%	\$53,520	\$61,120	\$68,800	\$76,400	\$82,560	\$88,640	\$78,800	\$100,880

## EMERGENCY

EVK

- 2023

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Moerlein Properties LLC, thereby authorizing a 12-year tax exemption for 100% of the value of improvements made to real property located at 115-125 W. McMillan Avenue and 124-142 Lyon Street in the CUF neighborhood of Cincinnati, in connection with the construction of a mixed-use development comprised of a parking garage, approximately 5,000 square feet of commercial space, and approximately 263,000 square feet of residential space, consisting of approximately 103 units, at a total construction cost of approximately \$33,000,000.

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

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

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

WHEREAS, Moerlein Properties LLC (the “Company”) desires to construct a mixed-use development comprised of a parking garage, approximately 5,000 square feet of commercial space, and approximately 263,000 square feet of residential space, consisting of approximately 103 units, all on real property at 115-125 W. McMillan Avenue and 124-142 Lyon Street located within the corporate boundaries of the City of Cincinnati (the “Improvements”), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

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

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

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

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

WHEREAS, the City’s Department of Community and Economic Development estimates that the real property tax exemption for the Improvements will provide an annual net benefit to the Company in the amount of approximately \$302,643; and

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

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

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement* with Moerlein Properties LLC (the “Agreement”), thereby authorizing a 12-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 115-125 W. McMillan Avenue and 124-142 Lyon Street in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the construction of a mixed-use development comprised of a parking garage, approximately 5,000 square feet of commercial space, and approximately 263,000 square feet of residential space, consisting of approximately 103 units, to be completed at a total construction cost of approximately \$33,000,000.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and
- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District, in accordance with Ohio Revised Code Section 3735.672; and
- (iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to allow the construction described in this ordinance and the corresponding revitalization of the City of Cincinnati and the benefits to the City's economic welfare to begin at the earliest possible time.

Passed: \_\_\_\_\_, 2023

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

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

## Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and MOERLEIN PROPERTIES 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, Ordinance No. 370-2020, passed on November 12, 2020, and Ordinance No. 24-2022, passed on February 2, 2022 (as amended, the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 115-125 W. McMillan Avenue and 124-142 Lyon Street, Cincinnati, Ohio 45219 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- E. The Company has proposed the construction of a complex located on the Property within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.
- F. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing 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.
- G. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.

- H. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- I. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- J. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- K. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- L. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- M. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- N. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- O. The Company acknowledges that the CUF neighborhood is a rising neighborhood in need of resources for development, neighborhood improvements, amenities, and organizations oriented towards neighborhood services. The Company anticipates that future development, improvements, amenities and organizations will contribute to the quality and vitality of the neighborhood, therefore increasing the value of the Property and directly and indirectly contributing to the Project's success. The Project's success, in turn, will benefit the neighborhood. Although this feedback effect will promote the revitalization and redevelopment of the City, it could also impact the affordability of property in the area. Therefore, in support of the CUF neighborhood and with the intention of preserving and improving the availability of quality, reliable affordable housing on a City-wide basis, as a material inducement to the City to enter into this Agreement, the Company hereby represents to the City that it will enter into a voluntary tax incentive contribution agreement ("VTICA") with a City-designated third-party non-profit administrative organization (the "Third-Party Administrator") to contribute to the Third-Party Administrator an amount equal to fifteen percent (15%) of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"). Half of such VTICA Contribution is to be committed by the Third-Party Administrator to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the CUF neighborhood and the other half of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-

wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

P. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2023, passed by Cincinnati City Council on \_\_\_\_\_, 2023.

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

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

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct a complex with a parking garage into approximately, 263,000 square feet of residential space, consisting of approximately 103 units, and approximately 5,000 square feet of commercial space on the Property (the "Improvements") at an estimated aggregate cost of Thirty-Three Million Dollars (\$33,000,000) to commence after the execution of this Agreement and to be completed no later than December 31, 2025; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his or her discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code requirements and zoning regulations. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "**ADA**"), and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then the Company shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (100%) of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of twelve (12) years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption, and (D) if a remodeled structure is a structure of historical or

architectural significance as designated by the City, state or federal government, that the appropriateness of the construction has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2026 nor extend beyond the earlier of (i) tax year 2037 or (ii) the end of the twelfth (12<sup>th</sup>) year of exemption.

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

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

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

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

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

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or



appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

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

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

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

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: seventeen percent (17%) MBE participation; and 10% 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.

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

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above 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 Firm 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 (i) 4 full-time permanent jobs, and (ii) 150 full-time temporary construction jobs, at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$300,000 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$10,650,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

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

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

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

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

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

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

Section 18. Revocation.

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

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

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

Section 19. False Statements; Penalties; Material Representations.

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

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

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

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

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an

agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

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

To the City:

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

To the Company:

Moerlein Properties LLC  
c/o Hallmark Campus Communities  
Attention: William Kirk  
150 E. Broad Street  
Columbus, Ohio 43215

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 acknowledgment 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

MOERLEIN PROPERTIES LLC,  
an Ohio limited liability company

By: \_\_\_\_\_  
Sheryl M. M. Long, City Manager

Date: \_\_\_\_\_, 2023

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

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

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

Date: \_\_\_\_\_, 2023

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: 115-125 W. McMillan Avenue, Cincinnati, Ohio 45202  
Auditor's Parcel No.: 100-0003-0001, -0002, -0003, -0004, -0005, -0006, and -0007

**PARCEL NOS. 100-0003-0004 and 0005 (cons.):**

Situate in the City of Cincinnati, Hamilton County, Ohio on the south side of McMillan Street, between Ohio Avenue and Moerlein Avenue, being 40 feet front by 97.51 feet deep, and being Lot No. 21, and 15 feet off of the east side of Lot No. 22 on a plat of subdivision made by the heirs of Adeline L. Brashear of the north part of Lot 1 of Barr, Graham and Lewis Subdivision, which said plat is recorded in Plat Book 8, Volume 2, Page 11, in the office of the Recorder of Deeds of Hamilton County, Ohio.

**PARCEL NO. 100-0003-0003:**

Situate in the City of Cincinnati, Hamilton County, Ohio, and being Lot 23 and the West 10 feet of Lot 22 of the Subdivision made by the heirs of Adeline L. Brashear, of the North part of Lot 1 of Barr, Graham and Lewis Subdivision, a plat of which is recorded in Plat Book 8, Volume 2, Page 11 of the Plat Records of Hamilton County, Ohio, said Lot 23 and the West 10 feet of Lot 22 of said Subdivision as aforesaid fronting 35 feet on the South side of McMillan Street and having a depth between parallel lines of 97.51 feet.

**PARCEL NO. 100-0003-0001 and 0002 (cons.):**

Situate in the City of Cincinnati, County of Hamilton, State of Ohio, and being Lots Nos. 24 and 25 on a plat of Subdivision made by heirs of Adeline L. Brashear of part of Lot No. 1 of Barr, Graham and Lewis' Subdivision, recorded in Plat Book 8, Volume 2, Page 11, of the Plat Records of the Recorder's Office of Hamilton County, Ohio; said lots being on the south side of McMillan Street between Ohio Avenue and Moerlein Avenue in said City of Cincinnati.

**PARCEL NOS. 100-0003-0006 and 0007 (cons.):**

Situated in the State of Ohio, County of Hamilton and in the City of Cincinnati and being more particularly described as follows:

Being Lots Numbers Nineteen (19) and Twenty (20) on a plat of subdivision made by the heirs of Adeline I. Brashear of the north part of Lot Number One (1) of Barr, Graham and Lewis Subdivision, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 8, Volume 2, Page 11, Recorder's Office, Hamilton County, Ohio.

Property Address: 142 W. Lyon Street, Cincinnati, Ohio 45202  
Auditor's Parcel No.: 100-0003-0026

Situate in Section 13, T3, FR2, Millcreek Township, City of Cincinnati, Hamilton County, Ohio and formerly being all of Lots Twenty-one (21), Twenty-two (22) and the east 5.00 feet of Lot Twenty-three (23) of the Estate of John Smith, subdivided by Barr, Graham and Lewis as now recorded in Plat Book 2, page 281 in the Recorder's Office and being more particularly described as follows:

Beginning at an Iron pin set with cap S-7133 at the Northeast corner of Lyon Street and Moerlein Avenue; thence North 8 degrees, 18' 48" East along the East line of Moerlein Avenue-152.00 feet to a set 1/2" iron pin with cap S-7133; thence North 89 degrees, 00', 00" East-parallel to the South line of McMillan Avenue along the south line of Adeline Brashaer's Heir's Subdivision as recorded in Plat Book 8, Volume 2, Page 11 R.O.-65.00 feet to a set 1/2" iron pin with cap S-7133; thence South 8 degrees, 18' 48" West-along the west line of Lot Twenty (20) of said John Smith's Estate Subdivision-152.00 feet to a point on the North line of Lyon Street (witnessed by a set cross notch on a 5.00 feet offset line South 8 degrees, 18' 48" West-5.07 feet); thence South 89 degrees, 00' 00" West- along the North line of Lyon Street-65.00 feet to the point of beginning, containing 0.2238 acres, more or less.

Bearings based on monuments found on the North line of McMillan Avenue-North 89 degrees, 00', 00" East assumed.

Based on a survey by George Armstrong, P.S. S-7133 dated 1/20/2000.

Property Address: 124-126 Lyon Street, Cincinnati, Ohio 45202  
Auditor's Parcel No.: 100-0003-0034 and -0035

ALL THOSE CERTAIN LOTS OF GROUND, SITUATED ON THE NORTH SIDE OF LYON STREET, IN THE CITY OF CINCINNATI, COUNTY OF HAMILTON AND STATE OF OHIO, KNOWN AND DESIGNATED AS LOTS NO. FOURTEEN (14) AND FIFTEEN (15) ON THE PLAT OF SUBDIVISION OF THE ESTATE OF JOHN SMITH DECEASED, RECORDED IN PLAT BOOK 2, PAGE 281, IN THE RECORDER'S OFFICE OF HAMILTON COUNTY, OHIO; COMMENCING AT THE SOUTHWEST CORNER OF LOT NO. THIRTEEN (13) ON SAID PLAT OF SUBDIVISION, THENCE WEST ALONG THE NORTH SIDE OF LYON STREET, 60 FEET TO THE EAST LINE OF LOT NO. SIXTEEN (16); THENCE NORTH WITH SAID EAST LINE OF LOT NO. SIXTEEN (16), 150 FEET; THENCE EAST ON A LINE PARALLEL WITH LYON STREET, 60 FEET TO THE EAST LINE OF LOT NO. FOURTEEN (14); THENCE SOUTH WITH SAID EAST LINE OF LOT NO. FOURTEEN (14), 150 FEET TO LYON STREET, THE PLACE OF BEGINNING.

Property Address: 138 Lyon Street, Cincinnati, Ohio 45202  
Auditor's Parcel No.: 100-0003-0029

SITUATE AND BEING ALL OF LOT NUMBER TWENTY (20) OF JOHN SMITH'S ESTATE SUBDIVISION OF PART OF BLOCK NO. 1 OF BARR, GRAHAM AND LEWIS SUBDIVISION AS MADE IN CASE NO. 1065 OF THE PROBATE COURT OF HAMILTON COUNTY, OHIO, A PLAT OF WHICH SUBDIVISION IS RECORDED IN PLAT BOOK 2, PAGE 281, HAMILTON COUNTY, OHIO RECORDS.

Property Address: 136 Lyon Street, Cincinnati, Ohio 45202  
Auditor's Parcel No.: 100-0003-0030 and -0031 (cons.)

SITUATED IN THE CITY OF CINCINNATI, COUNTY OF HAMILTON AND STATE OF OHIO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEING LOT NO. 19 AND THE WESTERLY 20 FEET OF LOT NO. 18 OF JOHN SMITH, DECEASED, SUBDIVISION OF LOT NO. 1 OF BARR, GRAHAM AND LEWIS SUBDIVISION; FRONTING 50 FEET ON THE NORTH SIDE OF LYON STREET AND EXTENDING BACK NORTHWARDLY BETWEEN PARALLEL LINES A DISTANCE OF 150 FEET.

Property Address: 132 Lyon Street, Cincinnati, Ohio 45202  
Auditor's Parcel No.: 100-0003-0032

All those certain lots of ground situated on the north side of Lyon Street, in the City of Cincinnati, County of Hamilton and State of Ohio, known and designated as Lot number 17 and 10 feet off the easterly side of Lot number 18 on the plat of the subdivision of the Estate of John Smith, deceased, commencing at a point 409.17 feet west of Ohio Avenue; thence west along the north line of Lyon Street, 40 feet; thence north on a line parallel with the west line of said lot number 18, 150 feet; thence east on a line parallel with Lyon Street, 40 feet to the east line of Lot number 17 on said plat of subdivision, thence south with said east line of lot number 17, 150 feet to Lyon Street, the place of beginning.

Property Address: 128 Lyon Street, Cincinnati, Ohio 45202  
Auditor's Parcel No.: 100-0003-0033

Situated in the City of Cincinnati, State of Ohio and County of Hamilton, and being located on the north side of Lyon Street, known and designated as Lot no. 16 on the plat of subdivision of the Estate of John Smith, deceased, commencing at the a point 379.17 feet west of Ohio Avenue; thence west along the north line of Lyon Street 30 feet; thence north along the east line of Lot no. 17, 150 feet; thence east on a line parallel with Lyon Street 30 feet; thence south along the west line of lot no. 15, 150 feet to the place of beginning.

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

TO BE ATTACHED

March 8, 2023

202300750

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

**From:** Sheryl M. M. Long, City Manager

**Subject: Finance and Budget Monitoring Report for the Period Ending December 31, 2022**

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The purpose of this report is to provide the City Council with the status of the City's Fiscal Year (FY) 2023 financial and operating budget conditions as of December 31, 2022, to note any significant variances, identify potential budget issues, and provide recommendations. The report is divided into two sections: revenues and expenditures. Various supplemental reports are attached to reflect forecasted revenue, actual revenue, expenditures, and commitments through December 31, 2022.

The following Citywide issues may impact the General Fund 050, Special Revenue Funds, and Enterprise Funds.

1. General Fund revenues are greater than projected by \$11.2 million through the end of December. However, this report highlights increased potential expenditure needs in the amount of \$10.6 million.
2. Overtime in the Cincinnati Fire Department (CFD) and the Cincinnati Police Department (CPD) is currently outpacing the budget. In CFD, the increased overtime is primarily driven by the increased attrition experienced over the past several years. The department is required to use overtime to backfill the vacant positions. Additionally, the department added a new engine company to Westwood Station 35, resulting in additional staffing requirements and associated overtime. The graduation of Recruit Class #120 is expected to reduce overtime usage starting in the spring of 2023. If overtime trends do not curtail, the CFD projects a need of up to \$4.1 million by fiscal year end due to increased overtime. In CPD, the increased overtime is primarily due to Police Visibility Overtime (PVO) related to Downtown Event Deployment to curb violence and for large public events such as BLINK, Oktoberfest Zinzinnati, and Cincinnati Bengals home football games. Increased overtime is also required due to a higher vacancy rate of sworn positions, which is expected to curtail when the 113<sup>th</sup> Recruit Class graduates this winter. While \$500,000 American Rescue Plan (ARP) Act resources were allocated during this monitoring period to partially address CPD's overtime need, a need of \$800,000 remains.

3. The Approved FY 2022 Budget included a 2.0% wage increase for Cincinnati Organized and Dedicated Employees (CODE). The wage increase was not paid in FY 2022 as contract negotiations were still underway. Following the report of a fact finder in September 2022, which was approved by the City Council on October 5, 2022, through Ordinance No. 0312-2022, the new labor agreement includes a 5.0% wage increase retroactive to March 2022. The City processed a one-time payment to CODE employees in November 2022 for the portion of the wage increase retroactive to March 2022. Across all funds, the retroactive payment totaled \$2.3 million, including \$631,000 in the General Fund. Supplemental appropriations may be required to cover the additional cost of the wage increase over the budgeted amount as well as the retroactive pay.
4. The Approved FY 2023 Budget Update included a 3.0% wage increase for CODE. The fact finder's report, which was approved by the City Council on October 5, 2022, through Ordinance No. 0312-2022, includes a 4.0% wage increase for March 2023. Supplemental appropriations may be required to cover the cost of the wage increase over the budgeted amount.
5. Community Health Center Activities Fund 395 revenues continue to be negatively impacted by the lasting effects of the COVID-19 pandemic. Healthcare workers remain in high demand, which has resulted in a staffing shortage in nurses and medical assistants working in health centers. These staffing issues have impacted appointment availability and related revenue. The Cincinnati Health Department is continuing the hiring of temporary staff to alleviate staffing needs until the department can fill the permanent position vacancies. Revenue trends will continue to be closely monitored.
6. Parking meter revenue is below the estimate. However, many contractual service expenditures are based on revenue, so less revenue results in lower expenses in some cases. This should offset the reduction in revenue. The fund will be monitored closely to ensure expenditures do not outpace revenues.
7. The lasting impacts of the COVID-19 pandemic continue to impact supply chains and the costs of various goods and services. Departments report several areas of concern, including energy costs, vehicle repair and maintenance costs, and the supply of new vehicles. Trends in the energy sector show an increase in costs for natural gas, petroleum, etc. Supply chain issues have also resulted in the shortage of vehicle parts and semiconductor chips. Fleet repairs are becoming more difficult and more expensive in certain cases. The acquisition of new vehicles has also been affected by these issues. Fleet Services anticipates that new vehicles will be significantly delayed which may result in an operating budget need for vehicle leases until new vehicles become available and increased repair costs as older vehicles will remain in service for a longer

than anticipated period of time. These issues will be monitored closely for budgetary and operational impacts.

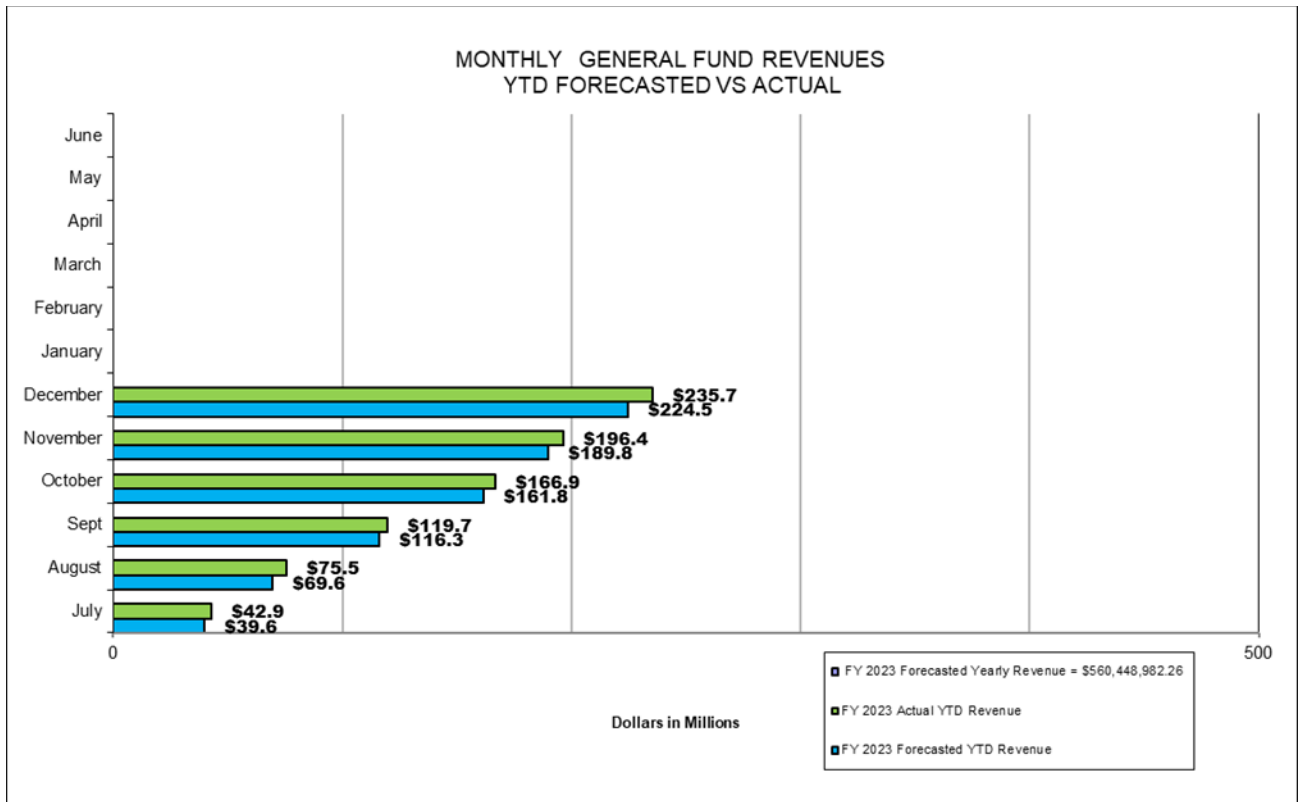
## REVENUE

The following report provides an update on the City of Cincinnati’s financial condition as of the month ending December 31, 2022. Variances 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 versus forecasted revenue and prior year actual revenue versus current year actual revenue. Both of those reports are presented on a monthly and year-to-date basis.

### I. GENERAL FUND 050

The chart below portrays the performance of actual revenue collected against the forecasted revenue collected through December 31, 2022, and shows that actual revenue of \$235.7 million was above forecasted revenue of \$224.5 million by \$11.2 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.

<b>GENERAL FUND REVENUE SOURCES</b>		
	<b>FAVORABLE VARIANCE</b>	<b>(UNFAVORABLE) VARIANCE</b>
General Property Tax		(\$1,534,628)
City Income Tax	8,692,309	
Admissions Tax	1,232,508	
Short Term Rental Excise Tax	521,611	
Licenses & Permits	445,155	
Fines, Forfeitures, & Penalties	512,474	
Investment Income	1,207,434	
Local Government	531,041	
Casino	461,182	
Police	529,501	
Buildings and Inspections		(\$16,349)
Fire	566,477	
Parking Meter	300	
Other		(\$1,962,072)
	14,699,991	(\$3,513,049)
Difference	11,186,942	

**General Fund (favorable variance) is \$11.2 million** above the amount forecasted through December in the FY 2023 Budget. This is the sixth month's report for the fiscal year. What follows is an explanation of significant variances of individual General Fund revenue components.

- 1. Property Tax (unfavorable variance) is \$1.5 million** below estimate due to the decrease in the millage for this half. The millage for the second half is set at a higher rate which will offset this unfavorable variance. The Administration anticipates Property Tax revenue will be on target at year end. This is a semi-annual payment. The second payment will be received in late Spring.



2. **Income Tax (favorable variance) is \$8.7 million** above the forecasted amount. This amount can fluctuate throughout the year as quarterly net profits are due. The Finance Department will continue to watch the trends, including those related to remote work, very closely.
3. **Admission Tax (favorable variance) is \$1.2 million** above estimate. Many estimates were set at pre-pandemic levels; however, businesses have rebounded stronger than expected.
4. **Other (unfavorable variance) is \$2 million** below forecast. This category is made up of many small sources of revenue that fluctuate from time to time. The Finance Department will continue to monitor these various revenue sources.

## II. RESTRICTED FUNDS

- A. **Parking Meter (unfavorable variance) is \$463k below estimate.** Even with a reduction in the current year estimate from last year, there is still less demand leading to the negative variance.
- B. **Convention Center (favorable variance) is \$642k** above estimate. The venue started this fiscal year off better than it has in several years with many bookings taking place again. In addition, the return of many people to downtown hotels has resulted in increased transient occupancy tax revenue.
- C. **Sawyer Point (unfavorable variance) is down \$240k.** This variance is partly due to a large concert cancellation at the beginning of the fiscal year and less demand for parking at the riverfront.
- D. **Community Health Centers (favorable variance) is up \$2.3 million.** Federal Emergency Management Agency (FEMA) reimbursements were received that cover prior year COVID expenses such as supplies and vaccine clinics. This was not estimated in FY 2023 as the timeliness of these reimbursements are difficult to predict.
- E. **Streetcar Operations (favorable variance) is \$1.7 million** above estimate. The Ohio Transit Partnership (OTP) and Formula grant payments were delayed from FY 2022, as were the voluntary tax incentive contribution agreement (VTICA) payments. These receipts were not estimated in FY 2023. This category will remain above estimate this fiscal year.
- F. **General Aviation (favorable variance) is up \$274k.** The County Auditor deemed some parcels owned by the City to be tax exempt, which resulted in an unexpected refund of more than \$349k in FY 2023. This category should end the

fiscal year above the estimate.

## **EXPENDITURES**

The following provides an update on the City of Cincinnati's operating budget position as of the month ending December 31, 2022. The attached Fund Summary Report provides the current budget, expenditures, and commitments of each appropriated fund. This report is presented on a year-to-date basis.

### **I. GENERAL FUND 050**

As shown on the attached report, total expenditures are 45.7% of budget, and commitments are 50.4% of budget in General Fund 050 as compared to the estimated period ending December 31, 2022, or 50.0% of the fiscal year. "Non-personnel expenses" are trending higher at 66.4% committed year to date due to encumbering twelve months of expenditures for certain commodities such as gas and electric costs, contractual services, and materials and supplies. This is not unusual for this reporting period.

The majority of departments have indicated their FY 2023 General Fund 050 appropriation will meet their budgetary needs through the end of the fiscal year. However, budget transfers may be necessary to move funds from divisions and programs with savings to others within the respective departments that have budget needs. These transfers will be included in the Final Adjustment Ordinance (FAO), which will be presented to the City Council in May 2023.

#### **A. Budget Savings Identified**

As of December 31, 2022, one General Fund 050 department is projecting savings at the end of FY 2023. The identified savings will be available to support budget needs in other departments and programs as necessary. Interdepartmental transfers of funds from one department to another will be included in the FAO as appropriate.

##### **1. Department of City Planning and Engagement (\$100,000)**

The Department of City Planning and Engagement projects net savings of \$100,000 due to position vacancy savings. These savings will fully offset needs related to non-personnel expenses for the new community engagement functions. This includes computer equipment for the new staff as well as other expenses for community engagement efforts.

## **B. Budget Needs Identified**

Based on current expenditure projections, the following General Fund 050 departments are forecasting a budget need in FY 2023. The departments have been advised to manage their appropriated resources so that supplemental appropriations will not be required. However, the Administration will continue to closely monitor these budgets in the coming months and work with the respective departments to mitigate the need for supplemental appropriations. As appropriate, any remaining budget needs will be addressed with the FAO.

### **1. City Manager's Office (\$200,000)**

The City Manager's Office projects a need of \$200,000 for a climate assessment in the Police Department and training for the Fire Department. Additionally, a potential non-personnel need may arise related to Infrastructure Investment and Jobs Act (IIJA) grant application consulting services.

### **2. Citizen Complaint Authority (\$65,000)**

The Citizen Complaint Authority (CCA) projects a possible personnel need of up to \$44,000 resulting from vacant positions that were filled at higher than anticipated salaries as well as anticipated equity salary adjustments. Additionally, the department is projecting a non-personnel need of \$21,000 for unbudgeted expenses related to travel and training as well as temporary staffing. Ordinance No. 0396-2022 authorized the transfer of \$15,000 to address needs resulting from a FY 2022 computer expense that was not properly encumbered as well as telephone expenses for cell phones for investigators.

### **3. Cincinnati Police Department (\$1.1 million)**

The Cincinnati Police Department (CPD) projects an overall need of approximately \$1.1 million primarily due to personnel expense overages. Personnel overages are estimated at \$800,000 and are attributed to increased Police Visibility Overtime (PVO) related to Downtown Event Deployment to curb violence and for large public events such as BLINK, Oktoberfest Zinzinnati, and Cincinnati Bengals home football games. Increased overtime is also required due to a higher vacancy rate of sworn positions, which is expected to curtail when the 113<sup>th</sup> Recruit Class graduates this winter. Lump sum payments have also exceeded expectations due to the retirement of several veteran officers. Additionally, a non-personnel need of \$310,000 is projected due to unbudgeted annual software maintenance for the department's wireless mobile digital video (in-car camera) system. Personnel and non-personnel expenditures will be closely monitored over the next few months. The overtime need was reduced by \$500,000 due to a reallocation of American Rescue Plan (ARP) Act resources during this monitoring period.

**4. Department of Public Services (\$165,000)**

The Department of Public Services (DPS) is reporting a potential need related to increased utility costs due to stormwater rate increases. DPS projects utility expenses could create a budget need of approximately \$176,600. Additionally, DPS projects a potential need due to the CODE retroactive salary adjustment implemented in November 2022, and other staffing adjustments. These needs may be partially offset by position vacancy savings as well as increased reimbursements, which are currently projected to result in a net personnel savings of \$11,000. These needs will be monitored closely as the fiscal year continues.

**5. Cincinnati Fire Department (\$4.1 million)**

The Cincinnati Department (CFD) projects a total need of up to \$4.1 million primarily due to overtime. Increased attrition over the past several years has necessitated the use of overtime to backfill vacant positions. Additionally, the department added a new engine company to Westwood Station 35, resulting in additional staffing requirements and associated overtime. CFD recently changed the unit dispatch process to include apparatus GPS relative to the emergency location. This has led to an increase in daily runs performed by the Westwood engine company and the Price Hill engine company. The department plans to run the additional engine until the number of runs performed daily reverts to the mean. The graduation of Recruit Class #120 is expected to reduce overtime usage starting in the spring of 2023. If overtime trends do not curtail, the CFD projects a need of up to \$4.1 million by fiscal year end due to increased overtime. However, this need may be partially offset by non-personnel savings. Both the department and the Office of Budget and Evaluation will continue to closely monitor staffing trends and overtime needs.

**6. Department of Economic Inclusion (\$134,000)**

The Department of Economic Inclusion projects a potential personnel need of up to \$172,000 due to being fully staffed. However, this need may be partially offset through additional reimbursements from the Income Tax-Infrastructure Fund for eligible work for a total estimated net need of \$134,000.

**7. Non-Departmental Accounts (\$4.8 million)**

The Internal Revenue Service (IRS) limits the maximum employee benefit received from a defined contribution retirement plan. Per the Cincinnati Municipal Code (CMC), the City is responsible for covering the excess benefit amount, which is paid from the Contribution to Total Benefit Arrangement (Cincinnati Retirement System (CRS)) non-departmental account. An amount of \$1,000 is needed in this account in order to comply with IRS regulations. Additionally, the Law Department projects a potential need of up to \$1.5 million in the Judgments Against the City non-departmental account for settlements. The timing of settlements may also impact the potential need. The Law Department

will monitor this need closely. The City will also owe a judgment of approximately \$3,280,000 due to the Ohio First District Court of Appeals upholding the finding, in *White v. Cincinnati, 2021-Ohio-4003*, that the false alarm fee imposed by the City under Cincinnati Municipal Code (CMC) Chapter 807 to be a tax which was determined to be unconstitutional. A supplemental appropriation will be required for the payment of this judgment.

### **C. Within Budget, Intradepartmental Budget Transfers May Be Needed**

Numerous General Fund 050 departments have indicated the ability to manage their resources within their appropriation. However, budget adjustments within their departments may be required. These transfers are referred to as Intradepartmental Budget Transfers. Unless noted otherwise, these Intradepartmental Budget Transfers will be included in the FAO, which will be presented to the City Council for approval in May 2023.

#### **1. Clerk of Council**

The Clerk of Council's Office projects a potential non-personnel need due to evening neighborhood meetings, which are held twice a month. Several additional meetings for Budget Public Hearings are also expected. Each meeting costs an estimated \$1,000 currently. However, audio expenses will increase in March 2023, after which each meeting will cost an estimated \$1,200. This ongoing expense will be monitored and addressed in a budget adjustment ordinance if necessary.

#### **2. Enterprise Technology Solutions**

The Department of Enterprise Technology Solutions projects no budget savings or need at this time, pending reimbursement processing.

#### **3. City Manager's Office: Office of Communications**

The Office of Communications projects no budget savings or need at this time.

#### **4. City Manager's Office: Office of Human Relations**

The Office of Human Relations projects a need of \$4,950 related to a cancelled prior-year encumbrance. This expense will be absorbed by the City Manager's Office and monitored.

#### **5. City Manager's Office: Office of Budget and Evaluation**

The Office of Budget and Evaluation projects no budget savings or need at this time, pending reimbursement processing.

#### **6. City Manager's Office: Emergency Communications Center (ECC)**

The Emergency Communications Center projects no budget savings or need at this time. However, a need may arise related to the 311 service line chat tool software.

**7. City Manager’s Office: Office of Environment and Sustainability**

The Office of Environment and Sustainability projects no budget savings or need at this time. However, a non-personnel need related to recycling may arise.

**8. City Manager’s Office: Office of Procurement**

The Office of Procurement projects no budget savings or need at this time, pending reimbursement processing.

**9. City Manager’s Office: Office of Performance and Data Analytics (OPDA)**

The Office of Performance and Data Analytics projects potential personnel savings, which will be monitored. No savings or needs are anticipated in the non-personnel budget.

**10. City Manager’s Office: Internal Audit**

Internal Audit projects a possible personnel need. The budget will be monitored for a possible shortfall, which can be resolved in the Final Adjustment Ordinance if necessary.

**11. Department of Law**

The Department of Law projects no budget savings or need at this time.

**12. Department of Human Resources**

The Department of Human Resources projects no budget savings or need at this time. However, several positions will be transferred from other departments to the Department of Human Resources as part of the ongoing HR centralization process. These transfers may require reimbursements between departments and adjustments as part of the Final Adjustment Ordinance. Finally, in prior monitoring reports, HR reported a need related to the replacement of their front door. Ordinance No. 0396-2022 authorized the transfer of \$10,000 to address this need.

**13. Department of Finance**

The Department of Finance projects a potential personnel need in the Treasury Division, which was authorized to add an unbudgeted Senior Accountant position. Transfers between agencies may be requested as part of the Final Adjustment Ordinance.

**14. Department of Community and Economic Development**

The Department of Community and Economic Development (DCED) projects a non-personnel need due to Shillito’s West annual operating expenses as well as the acquisition of the Saks building. Additionally, there is a potential personnel need in the Housing Division. These needs may be partially offset by personnel savings in the Economic Development Division. Transfers between agencies may be required as part of the Final Adjustment Ordinance.

**15. Cincinnati Recreation Commission**

The Cincinnati Recreation Commission projects no budget savings or need at this time. The department has several reimbursements that will be processed in the coming months. Additionally, transfers between agencies may be requested as part of a mid-year budget adjustment ordinance or the Final Adjustment Ordinance.

**16. Cincinnati Parks Department**

The Parks Department projects no budget savings or need at this time, pending reimbursement processing. However, transfers between agencies may be required as part of the Final Adjustment Ordinance.

**17. Department of Buildings and Inspections**

The Department of Buildings and Inspections projects no budget savings or need at this time. The department has several reimbursements that will be processed in the coming months. Additionally, due to staffing and hiring issues, the department is engaging an external contractor to assist with plan reviews. This contractual service need can be offset by position vacancy savings, but transfers will be required as part of the Final Adjustment Ordinance.

**18. Department of Transportation and Engineering**

The Department of Transportation and Engineering projects a potential personnel need, pending reimbursement processing. Adjustment between agencies may be required as part of the Final Adjustment Ordinance.

**II. ENTERPRISE FUNDS**

Enterprise Funds account for any activity for which a fee is charged to external users for goods or services. If an activity's principal revenue source meets any one of the following criteria, it is required to be reported as an enterprise fund: (1) an activity financed with debt that is secured solely by pledge of the net revenues from fees and charges for the activity; (2) laws or regulations which require that the activity's costs of providing services, including capital costs, be recovered with fees and charges, rather than with taxes or similar revenues; or (3) pricing policies which establish fees and charges designed to recover the activity's costs.

**A. Water Works Fund 101**

Water Works Fund 101 is 40.1% expended year to date. The Greater Cincinnati Water Works (GCWW) projects a potential need related to utility expenses, postage, and credit card processing fees, which can be offset by savings in expert services and materials and supplies. These needs will be monitored closely.

**B. Parking System Facilities Fund 102**

Parking System Facilities Fund 102 includes the budget for off-street parking enterprises, including garages. Fund 102 is currently 34.5% expended year to date. The Division of Parking Facilities within the Department of Community and Economic Development continues to experience an increase in rent expenses due to the rise in employee parking at the Seventh Street Garage and the Hennegan Lot. The division is responsible for covering the difference between what City employees pay and the contracted monthly rate. This need is expected to be offset with savings in contractual services.

**C. Duke Energy Convention Center Fund 103**

Duke Energy Convention Center Fund 103 is 47.9% expended year to date. The Finance Department projects no savings or need at this time.

**D. General Aviation Fund 104**

General Aviation Fund 104 is 34.9% expended year to date. The Department of Transportation and Engineering may have personnel and fringe benefits savings in Fund 104 due to position vacancies, which will be monitored. Possible non-personnel needs related to auto repairs and maintenance will also be monitored.

**E. Municipal Golf Fund 105**

Municipal Golf Fund 105 is 66.8% expended year to date, which reflects expenses for the calendar year (CY) 2022 golf season and exceeds expectations. The Cincinnati Recreation Commission projects a non-personnel need of \$1.4 million related to increased course usage and maintenance as well as increased costs for utilities. A mid-year adjustment ordinance may be required. Municipal Golf Fund 105 has sufficient resources to support this potential supplemental appropriation as increased course usage has led to increased revenue.

**F. Stormwater Management Fund 107**

Stormwater Management Fund 107 provides resources to various City departments and is 40.8% expended year to date. The major recipient of resources from this fund is the Stormwater Management Utility (SMU). The Department of Public Services, the Parks Department, and the Department of Buildings and Inspections, among others, also receive appropriations from this fund. The Stormwater Management Fund is 40.8% expended year to date. SMU, the Parks Department, and the Department of Buildings and Inspections project no budget savings or need at this time. The Department of Public Services projects potential savings in personnel due to position vacancies.



### **III. DEBT SERVICE FUNDS**

Debt Service Funds account for the accumulation of resources for, and the payment of, principal and interest on the City's bonds issued in support of governmental activities.

#### **A. Bond Retirement Fund 151**

Bond Retirement Fund 151 is 67.1% expended year to date. The Finance Department projects no budget savings or need for FY 2023.

### **IV. APPROPRIATED SPECIAL REVENUE FUNDS**

Special Revenue Funds account for the proceeds of specific revenue sources (other than trusts for individuals, private organizations, or other governments, or for major capital projects) that are legally restricted to expenditures for specific purposes.

The Office of Budget and Evaluation, in cooperation with various City departments, reviewed appropriated special revenue funds to ensure the Approved FY 2023 Budget Update remains in balance. Based on expenditures and revenues through December 31, 2022, most special revenue funds are on target with regards to their budget and require no additional appropriations at this time. Any identified issues are highlighted in the narrative summaries provided below. If warranted, budget adjustments will be addressed in the FAO later in the fiscal year.

#### **A. Street Construction, Maintenance & Repair Fund 301**

Street Construction, Maintenance & Repair Fund 301 is 33.7% expended year to date. The Department of Transportation and Engineering (DOTE) projects a potential personnel savings as well as possible non-personnel need. Adjustments within appropriations may be requested as part of the Final Adjustment Ordinance. The Department of Public Services anticipates personnel and fringe benefit savings in Fund 301; however, these savings are anticipated to be partially offset by automotive maintenance and repair expenses as well as increased winter emergency operations expenses due to the projected inclement weather conditions over the next few months.

#### **B. Income Tax-Infrastructure Fund 302**

Income Tax-Infrastructure Fund 302 provides resources to several City departments. The Department of Transportation and Engineering is the largest recipient of resources from this fund. The Department of Public Services also receives Income Tax-Infrastructure Fund resources. Fund 302 is 41.0% expended year to date. The Department of Transportation and Engineering projects potential personnel savings due to position vacancies, which is offset by a potential non-personnel need related to natural gas expenses. Transfers between agencies

may also be required as part of the Final Adjustment Ordinance. The Department of Public Services projects a possible personnel need of \$45,000 related to overtime expenses and the CODE retroactive salary adjustment implemented in November 2022. Additionally, the Department of Public Services projects a need of \$30,000 in non-personnel for a Cincinnati Police Department facility energy audit.

**C. Parking Meter Fund 303**

Parking Meter Fund 303 includes the budget for on-street parking enterprises, including parking meters. Fund 303 is currently 42.4% expended year to date. The Division of Parking Facilities within the Department of Community and Economic Development projects a personnel savings, which will be used to offset a potential need in non-personnel primarily due to expert services.

**D. Municipal Motor Vehicle License Tax Fund 306**

Municipal Motor Vehicle License Tax Fund 306 is 31.3% expended year to date. The Department of Transportation and Engineering projects no savings or needs at this time. The Department of Public Services currently projects possible fringe benefits savings at this time. However, depending on weather conditions over the next few months, a potential need could arise related to winter emergency operation expenses.

**E. Sawyer Point Fund 318**

Sawyer Point Fund 318 is 21.4% expended year to date. The Parks Department projects no budget savings or need in Fund 318.

**F. Recreation Special Activities Fund 323**

Fund 323 is currently 38.0% expended year to date. However, transfers within existing appropriations may be requested as part of a mid-year budget adjustment ordinance.

**G. Cincinnati Riverfront Park Fund 329**

Cincinnati Riverfront Park Fund 329 is the appropriated fund for Smale Park. Fund 329 is currently 10.6% expended year to date. The Parks Department projects no budget savings or need in Fund 329.

**H. Hazard Abatement Fund 347**

Hazard Abatement Fund 347 is 3.1% expended year to date. The Department of Buildings and Inspections projects no budget savings or need at this time.

**I. 9-1-1 Cell Phone Fees Fund 364**

9-1-1 Cell Phone Fees Fund 364 is the appropriated fund that governs the City portion of state collected revenue from mobile device fees. Fund 364 is currently 7.5% expended year to date. The Emergency Communications Center projects no budget savings or need in Fund 364.

**J. Safe and Clean Fund 377**

Safe and Clean Fund 377 is the appropriated fund that collects revenue associated with billboard leases. These resources are allocated to Keep Cincinnati Beautiful (KCB) expenditures. This fund is currently 1.8% expended year to date. The Department of Public Services projects no budget savings or need.

**K. Community Health Center Activities Fund 395**

Community Health Center Activities Fund 395 is 39.3% expended year to date. The Cincinnati Health Department (CHD) projects potential non-personnel needs related to temporary staffing, uniform expenses, and the unbudgeted repair and replacement of equipment. However, these needs may be offset by personnel savings resulting from position vacancies.

**L. Cincinnati Health District Fund 416**

General operational support to the Cincinnati Health Department is provided by Cincinnati Health District Fund 416. This fund is 39.6% expended year to date. The Cincinnati Health Department (CHD) projects a net need of \$82,000. There is a non-personnel need primarily in contractual services related to the search for the next Health Commissioner, uniform expenses, building repair costs, and temporary personnel services. Additionally, the department projects a personnel need in the Community Health Services Division and the School & Adolescent Health Division. Personnel needs are exacerbated by unbudgeted expenses resulting from the new CODE labor agreement, including the retroactive salary adjustment implemented in November 2022. These needs can be partially offset by personnel savings in the Office of the Commissioner, the Primary Health Care Programs Division, and the Primary Health Care Centers Division. Additional resources and transfers may be required as part of the Final Adjustment Ordinance.

**M. Cincinnati Area Geographic Information System (CAGIS) Fund 449**

Cincinnati Area Geographic Information System Fund 449 is 32.1% expended year to date. Enterprise Technology Solutions projects no budget savings or need at this time.

**N. Streetcar Operations Fund 455**

Streetcar Operations Fund 455 is 43.5% expended year to date. The Department of Transportation and Engineering projects a total non-personnel need of \$504,000, primarily due to police security details and SORTA expenses. These needs may be covered by anticipated Ohio Department of Transportation (ODOT) grant resources as well as possible position vacancy savings. These needs will be monitored closely.

**O. County Law Enforcement Applied Regionally (CLEAR) Fund 457**

The CLEAR Fund is 23.9% expended year to date. Enterprise Technology Solutions projects no budget savings or need for FY 2023.

**Summary**

Through December 31, 2022, major budget issues include overtime needs for both the Police Department and Fire Department, revenue decline in Community Health Center Activities Fund 395 and Parking Meter Fund 303, unbudgeted wage items resulting from collective bargaining agreements, and lasting impacts from the COVID-19 pandemic related to supply chain issues and the costs of various goods and services. Departments have identified possible savings and shortfalls, which will continue to be monitored and updated monthly.

Submitted herewith are the following Office of Budget & Evaluation reports:

1. Fund Summary Report for the month ended December 31, 2022.

Submitted herewith are the following Department of Finance reports:

2. Comparative Statement of Revenue (Actuals, Forecast and Prior Year) as of December 31, 2022.
3. Audit of the City Treasurer's Report for the month ended November 30, 2022.
4. Statement of Balances in the various funds as of December 31, 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.

cc: William "Billy" Weber, Assistant City Manager  
Karen Alder, Finance Director  
Andrew M. Dudas, Budget Director

**CITY OF CINCINNATI  
FUND SUMMARY  
FOR FISCAL YEAR 2023  
AS OF 12/31/2022**

FUND	FUND NAME	EXPENDITURE CATEGORY	CURRENT BUDGET	EXPENDED	PERCENT EXPENDED	ENCUMBERED	TOTAL COMMITTED	PERCENT COMMITTED	REMAINING BALANCE
050	General	PERSONNEL SERVICES	277,879,940.00	124,567,914.02	44.8%	.00	124,567,914.02	44.8%	153,312,025.98
		EMPLOYEE BENEFITS	111,509,260.00	57,634,758.10	51.7%	345,321.45	57,980,079.55	52.0%	53,529,180.45
		NON-PERSONNEL EXPENSES	85,388,922.89	34,904,988.53	40.9%	21,800,683.58	56,705,672.11	66.4%	28,683,250.78
		PROPERTIES	25,860.00	.00	0.0%	.00	.00	0.0%	25,860.00
		<b>*TOTAL FUND_CD 050</b>	<b>474,803,982.89</b>	<b>217,107,660.65</b>	<b>45.7%</b>	<b>22,146,005.03</b>	<b>239,253,665.68</b>	<b>50.4%</b>	<b>235,550,317.21</b>
101	Water Works	PERSONNEL SERVICES	43,725,650.00	16,582,549.61	37.9%	.00	16,582,549.61	37.9%	27,143,100.39
		EMPLOYEE BENEFITS	17,620,410.00	8,079,203.17	45.9%	.00	8,079,203.17	45.9%	9,541,206.83
		NON-PERSONNEL EXPENSES	54,898,230.00	18,704,070.97	34.1%	17,117,945.73	35,822,016.70	65.3%	19,076,213.30
		DEBT SERVICE	45,233,480.00	21,418,043.10	47.3%	2,486,405.59	23,904,448.69	52.8%	21,329,031.31
		<b>*TOTAL FUND_CD 101</b>	<b>161,477,770.00</b>	<b>64,783,866.85</b>	<b>40.1%</b>	<b>19,604,351.32</b>	<b>84,388,218.17</b>	<b>52.3%</b>	<b>77,089,551.83</b>
102	Parking System Facilities	PERSONNEL SERVICES	378,710.00	149,183.26	39.4%	.00	149,183.26	39.4%	229,526.74
		EMPLOYEE BENEFITS	142,290.00	79,630.69	56.0%	.00	79,630.69	56.0%	62,659.31
		NON-PERSONNEL EXPENSES	4,946,200.00	1,458,909.46	29.5%	1,781,442.28	3,240,351.74	65.5%	1,705,848.26
		DEBT SERVICE	2,187,280.00	951,461.42	43.5%	.00	951,461.42	43.5%	1,235,818.58
		<b>*TOTAL FUND_CD 102</b>	<b>7,654,480.00</b>	<b>2,639,184.83</b>	<b>34.5%</b>	<b>1,781,442.28</b>	<b>4,420,627.11</b>	<b>57.8%</b>	<b>3,233,852.89</b>
103	Convention-Exposition Center	PERSONNEL SERVICES	91,070.00	38,186.36	41.9%	.00	38,186.36	41.9%	52,883.64
		EMPLOYEE BENEFITS	38,440.00	12,382.68	32.2%	.00	12,382.68	32.2%	26,057.32
		NON-PERSONNEL EXPENSES	9,931,930.00	4,658,968.62	46.9%	196,122.08	4,855,090.70	48.9%	5,076,839.30
		DEBT SERVICE	299,580.00	255,176.54	85.2%	.00	255,176.54	85.2%	44,403.46
		<b>*TOTAL FUND_CD 103</b>	<b>10,361,020.00</b>	<b>4,964,714.20</b>	<b>47.9%</b>	<b>196,122.08</b>	<b>5,160,836.28</b>	<b>49.8%</b>	<b>5,200,183.72</b>
104	General Aviation	PERSONNEL SERVICES	891,610.00	321,816.09	36.1%	.00	321,816.09	36.1%	569,793.91
		EMPLOYEE BENEFITS	367,700.00	140,544.24	38.2%	.00	140,544.24	38.2%	227,155.76
		NON-PERSONNEL EXPENSES	962,490.00	288,448.48	30.0%	107,422.32	395,870.80	41.1%	566,619.20
		DEBT SERVICE	44,420.00	40,394.64	90.9%	.00	40,394.64	90.9%	4,025.36
		<b>*TOTAL FUND_CD 104</b>	<b>2,266,220.00</b>	<b>791,203.45</b>	<b>34.9%</b>	<b>107,422.32</b>	<b>898,625.77</b>	<b>39.7%</b>	<b>1,367,594.23</b>
105	Municipal Golf	PERSONNEL SERVICES	224,490.00	66,196.53	29.5%	.00	66,196.53	29.5%	158,293.47
		EMPLOYEE BENEFITS	80,740.00	22,925.77	28.4%	.00	22,925.77	28.4%	57,814.23
		NON-PERSONNEL EXPENSES	4,700,510.00	3,347,255.83	71.2%	789,999.25	4,137,255.08	88.0%	563,254.92
		DEBT SERVICE	614,550.00	319,437.50	52.0%	.00	319,437.50	52.0%	295,112.50
		<b>*TOTAL FUND_CD 105</b>	<b>5,620,290.00</b>	<b>3,755,815.63</b>	<b>66.8%</b>	<b>789,999.25</b>	<b>4,545,814.88</b>	<b>80.9%</b>	<b>1,074,475.12</b>

**CITY OF CINCINNATI  
FUND SUMMARY  
FOR FISCAL YEAR 2023  
AS OF 12/31/2022**

FUND	FUND NAME	EXPENDITURE CATEGORY	CURRENT BUDGET	EXPENDED	PERCENT EXPENDED	ENCUMBERED	TOTAL COMMITTED	PERCENT COMMITTED	REMAINING BALANCE
107	Stormwater Management	PERSONNEL SERVICES	9,545,820.00	3,772,146.66	39.5%	.00	3,772,146.66	39.5%	5,773,673.34
		EMPLOYEE BENEFITS	4,063,860.00	1,569,346.06	38.6%	.00	1,569,346.06	38.6%	2,494,513.94
		NON-PERSONNEL EXPENSES	11,846,260.00	4,317,067.12	36.4%	1,766,706.30	6,083,773.42	51.4%	5,762,486.58
		PROPERTIES	50,000.00	.00	0.0%	47,175.00	47,175.00	94.4%	2,825.00
		DEBT SERVICE	1,957,310.00	1,542,426.68	78.8%	.00	1,542,426.68	78.8%	414,883.32
		<b>*TOTAL FUND_CD 107</b>	<b>27,463,250.00</b>	<b>11,200,986.52</b>	<b>40.8%</b>	<b>1,813,881.30</b>	<b>13,014,867.82</b>	<b>47.4%</b>	<b>14,448,382.18</b>
151	Bond Retirement - City	PERSONNEL SERVICES	298,180.00	100,750.33	33.8%	.00	100,750.33	33.8%	197,429.67
		EMPLOYEE BENEFITS	111,490.00	33,685.57	30.2%	.00	33,685.57	30.2%	77,804.43
		NON-PERSONNEL EXPENSES	3,528,470.00	438,902.58	12.4%	38,302.50	477,205.08	13.5%	3,051,264.92
		DEBT SERVICE	125,523,250.00	86,327,697.36	68.8%	.00	86,327,697.36	68.8%	39,195,552.64
		<b>*TOTAL FUND_CD 151</b>	<b>129,461,390.00</b>	<b>86,901,035.84</b>	<b>67.1%</b>	<b>38,302.50</b>	<b>86,939,338.34</b>	<b>67.2%</b>	<b>42,522,051.66</b>
301	Street Construction Maintenance & Repair	PERSONNEL SERVICES	6,750,870.00	2,417,280.07	35.8%	.00	2,417,280.07	35.8%	4,333,589.93
		EMPLOYEE BENEFITS	2,959,660.00	1,255,140.59	42.4%	.00	1,255,140.59	42.4%	1,704,519.41
		NON-PERSONNEL EXPENSES	6,963,000.00	1,938,678.96	27.8%	1,414,841.82	3,353,520.78	48.2%	3,609,479.22
		<b>*TOTAL FUND_CD 301</b>	<b>16,673,530.00</b>	<b>5,611,099.62</b>	<b>33.7%</b>	<b>1,414,841.82</b>	<b>7,025,941.44</b>	<b>42.1%</b>	<b>9,647,588.56</b>
302	Income Tax-Infrastructure	PERSONNEL SERVICES	13,383,110.00	5,066,980.54	37.9%	.00	5,066,980.54	37.9%	8,316,129.46
		EMPLOYEE BENEFITS	5,233,660.00	2,480,410.70	47.4%	.00	2,480,410.70	47.4%	2,753,249.30
		NON-PERSONNEL EXPENSES	5,878,120.00	2,486,916.84	42.3%	499,167.18	2,986,084.02	50.8%	2,892,035.98
		<b>*TOTAL FUND_CD 302</b>	<b>24,494,890.00</b>	<b>10,034,308.08</b>	<b>41.0%</b>	<b>499,167.18</b>	<b>10,533,475.26</b>	<b>43.0%</b>	<b>13,961,414.74</b>
303	Parking Meter	PERSONNEL SERVICES	1,827,660.00	678,190.99	37.1%	.00	678,190.99	37.1%	1,149,469.01
		EMPLOYEE BENEFITS	794,580.00	378,703.74	47.7%	.00	378,703.74	47.7%	415,876.26
		NON-PERSONNEL EXPENSES	2,298,250.00	1,027,489.99	44.7%	593,726.10	1,621,216.09	70.5%	677,033.91
		<b>*TOTAL FUND_CD 303</b>	<b>4,920,490.00</b>	<b>2,084,384.72</b>	<b>42.4%</b>	<b>593,726.10</b>	<b>2,678,110.82</b>	<b>54.4%</b>	<b>2,242,379.18</b>
306	Municipal Motor Vehicle License Tax	PERSONNEL SERVICES	1,577,010.00	583,433.31	37.0%	.00	583,433.31	37.0%	993,576.69
		EMPLOYEE BENEFITS	785,010.00	312,343.27	39.8%	.00	312,343.27	39.8%	472,666.73
		NON-PERSONNEL EXPENSES	1,611,270.00	346,113.75	21.5%	159,071.72	505,185.47	31.4%	1,106,084.53
		<b>*TOTAL FUND_CD 306</b>	<b>3,973,290.00</b>	<b>1,241,890.33</b>	<b>31.3%</b>	<b>159,071.72</b>	<b>1,400,962.05</b>	<b>35.3%</b>	<b>2,572,327.95</b>

CITY OF CINCINNATI  
FUND SUMMARY  
FOR FISCAL YEAR 2023  
AS OF 12/31/2022

FUND	FUND NAME	EXPENDITURE CATEGORY	CURRENT BUDGET	EXPENDED	PERCENT EXPENDED	ENCUMBERED	TOTAL COMMITTED	PERCENT COMMITTED	REMAINING BALANCE
318	Sawyer Point	PERSONNEL SERVICES	410,810.00	64,066.34	15.6%	.00	64,066.34	15.6%	346,743.66
		EMPLOYEE BENEFITS	115,560.00	21,808.36	18.9%	.00	21,808.36	18.9%	93,751.64
		NON-PERSONNEL EXPENSES	693,570.00	175,360.33	25.3%	141,333.67	316,694.00	45.7%	376,876.00
		<b>*TOTAL FUND_CD 318</b>	<b>1,219,940.00</b>	<b>261,235.03</b>	<b>21.4%</b>	<b>141,333.67</b>	<b>402,568.70</b>	<b>33.0%</b>	<b>817,371.30</b>
323	Recreation Special Activities	PERSONNEL SERVICES	3,663,260.00	1,170,247.99	31.9%	.00	1,170,247.99	31.9%	2,493,012.01
		EMPLOYEE BENEFITS	284,470.00	108,253.12	38.1%	.00	108,253.12	38.1%	176,216.88
		NON-PERSONNEL EXPENSES	1,669,070.00	862,926.63	51.7%	203,931.00	1,066,857.63	63.9%	602,212.37
		PROPERTIES	13,720.00	.00	0.0%	.00	.00	0.0%	13,720.00
		<b>*TOTAL FUND_CD 323</b>	<b>5,630,520.00</b>	<b>2,141,427.74</b>	<b>38.0%</b>	<b>203,931.00</b>	<b>2,345,358.74</b>	<b>41.7%</b>	<b>3,285,161.26</b>
329	Cincinnati Riverfront Park	PERSONNEL SERVICES	670,710.00	.00	0.0%	.00	.00	0.0%	670,710.00
		EMPLOYEE BENEFITS	342,840.00	6,242.50	1.8%	.00	6,242.50	1.8%	336,597.50
		NON-PERSONNEL EXPENSES	505,010.00	154,988.94	30.7%	136,068.83	291,057.77	57.6%	213,952.23
		<b>*TOTAL FUND_CD 329</b>	<b>1,518,560.00</b>	<b>161,231.44</b>	<b>10.6%</b>	<b>136,068.83</b>	<b>297,300.27</b>	<b>19.6%</b>	<b>1,221,259.73</b>
347	Hazard Abatement Fund	PERSONNEL SERVICES	455,010.00	7,482.86	1.6%	.00	7,482.86	1.6%	447,527.14
		EMPLOYEE BENEFITS	231,830.00	10,757.36	4.6%	.00	10,757.36	4.6%	221,072.64
		NON-PERSONNEL EXPENSES	10,720.00	3,283.85	30.6%	.00	3,283.85	30.6%	7,436.15
		<b>*TOTAL FUND_CD 347</b>	<b>697,560.00</b>	<b>21,524.07</b>	<b>3.1%</b>	<b>.00</b>	<b>21,524.07</b>	<b>3.1%</b>	<b>676,035.93</b>
364	9-1-1 Cell Phone Fees	PERSONNEL SERVICES	573,480.00	.00	0.0%	.00	.00	0.0%	573,480.00
		EMPLOYEE BENEFITS	243,880.00	.00	0.0%	.00	.00	0.0%	243,880.00
		NON-PERSONNEL EXPENSES	646,160.00	109,464.21	16.9%	12,872.73	122,336.94	18.9%	523,823.06
		<b>*TOTAL FUND_CD 364</b>	<b>1,463,520.00</b>	<b>109,464.21</b>	<b>7.5%</b>	<b>12,872.73</b>	<b>122,336.94</b>	<b>8.4%</b>	<b>1,341,183.06</b>
377	Safe & Clean	NON-PERSONNEL EXPENSES	52,040.00	927.48	1.8%	50,592.52	51,520.00	99.0%	520.00
		<b>*TOTAL FUND_CD 377</b>	<b>52,040.00</b>	<b>927.48</b>	<b>1.8%</b>	<b>50,592.52</b>	<b>51,520.00</b>	<b>99.0%</b>	<b>520.00</b>
395	Community Health Center Activities	PERSONNEL SERVICES	13,050,900.00	4,996,631.83	38.3%	.00	4,996,631.83	38.3%	8,054,268.17
		EMPLOYEE BENEFITS	5,547,470.00	2,342,626.68	42.2%	.00	2,342,626.68	42.2%	3,204,843.32
		NON-PERSONNEL EXPENSES	8,675,950.00	3,385,116.43	39.0%	3,675,017.07	7,060,133.50	81.4%	1,615,816.50
		<b>*TOTAL FUND_CD 395</b>	<b>27,274,320.00</b>	<b>10,724,374.94</b>	<b>39.3%</b>	<b>3,675,017.07</b>	<b>14,399,392.01</b>	<b>52.8%</b>	<b>12,874,927.99</b>

**CITY OF CINCINNATI  
FUND SUMMARY  
FOR FISCAL YEAR 2023  
AS OF 12/31/2022**

<b>FUND</b>	<b>FUND NAME</b>	<b>EXPENDITURE CATEGORY</b>	<b>CURRENT BUDGET</b>	<b>EXPENDED</b>	<b>PERCENT EXPENDED</b>	<b>ENCUMBERED</b>	<b>TOTAL COMMITTED</b>	<b>PERCENT COMMITTED</b>	<b>REMAINING BALANCE</b>
416	Cincinnati Health District	PERSONNEL SERVICES	13,018,010.00	5,029,412.29	38.6%	.00	5,029,412.29	38.6%	7,988,597.71
		EMPLOYEE BENEFITS	5,175,870.00	2,126,358.47	41.1%	.00	2,126,358.47	41.1%	3,049,511.53
		NON-PERSONNEL EXPENSES	1,367,550.00	592,796.35	43.3%	478,898.15	1,071,694.50	78.4%	295,855.50
		PROPERTIES	2,980.00	.00	0.0%	.00	.00	0.0%	2,980.00
		<b>*TOTAL FUND_CD 416</b>	<b>19,564,410.00</b>	<b>7,748,567.11</b>	<b>39.6%</b>	<b>478,898.15</b>	<b>8,227,465.26</b>	<b>42.1%</b>	<b>11,336,944.74</b>
449	Cincinnati Area Geographic Information Systems (CAGIS)	PERSONNEL SERVICES	1,934,950.00	743,032.87	38.4%	.00	743,032.87	38.4%	1,191,917.13
		EMPLOYEE BENEFITS	666,210.00	320,598.44	48.1%	.00	320,598.44	48.1%	345,611.56
		NON-PERSONNEL EXPENSES	2,180,710.00	471,974.18	21.6%	61,204.35	533,178.53	24.4%	1,647,531.47
		<b>*TOTAL FUND_CD 449</b>	<b>4,781,870.00</b>	<b>1,535,605.49</b>	<b>32.1%</b>	<b>61,204.35</b>	<b>1,596,809.84</b>	<b>33.4%</b>	<b>3,185,060.16</b>
455	Streetcar Operations	PERSONNEL SERVICES	619,270.00	217,258.99	35.1%	.00	217,258.99	35.1%	402,011.01
		EMPLOYEE BENEFITS	164,660.00	14,908.10	9.1%	.00	14,908.10	9.1%	149,751.90
		NON-PERSONNEL EXPENSES	4,356,489.00	2,004,410.56	46.0%	2,304,869.08	4,309,279.64	98.9%	47,209.36
		<b>*TOTAL FUND_CD 455</b>	<b>5,140,419.00</b>	<b>2,236,577.65</b>	<b>43.5%</b>	<b>2,304,869.08</b>	<b>4,541,446.73</b>	<b>88.3%</b>	<b>598,972.27</b>
457	County Law Enforcement Applied Regionally (CLEAR)	PERSONNEL SERVICES	1,572,400.00	430,240.69	27.4%	.00	430,240.69	27.4%	1,142,159.31
		EMPLOYEE BENEFITS	479,030.00	168,010.97	35.1%	.00	168,010.97	35.1%	311,019.03
		NON-PERSONNEL EXPENSES	3,494,640.00	726,652.94	20.8%	539,524.37	1,266,177.31	36.2%	2,228,462.69
		<b>*TOTAL FUND_CD 457</b>	<b>5,546,070.00</b>	<b>1,324,904.60</b>	<b>23.9%</b>	<b>539,524.37</b>	<b>1,864,428.97</b>	<b>33.6%</b>	<b>3,681,641.03</b>
<b>TOTAL</b>			<b>942,059,831.89</b>	<b>437,381,990.48</b>	<b>46.4%</b>	<b>56,748,644.67</b>	<b>494,130,635.15</b>	<b>52.5%</b>	<b>447,929,196.74</b>



**March 8, 2023**

**To:** Mayor and Members of City Council 202300756

**From:** Sheryl M. M. Long, City Manager

**Subject:** **Emergency Ordinance – Cincinnati Recreation Commission:  
Accept & Appropriate Ohio Child Care Stabilization Sub-Grant**

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Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the City Manager to accept and appropriate a grant in an amount of up to \$2,535,400 from the Ohio Child Care Stabilization Sub-Grant through the Ohio Child Care Resource and Referral Association and the Ohio Department of Job and Family Services (ALN 93.575) for the purpose of supporting approximately thirteen Cincinnati Recreation Commission licensed neighborhood childcare programs; and **AUTHORIZING** the Finance Director to deposit the grant funds into Recreation Federal Grant Projects Fund 324.

Approval of this Emergency Ordinance will authorize the City Manager to accept and appropriate a grant award of \$2,535,400 from the Ohio Child Care Stabilization Sub-Grant through the Ohio Child Care Resource and Referral Association (OCCRA) and the Ohio Department of Job and Family Services (ODJFS) for the purpose of supporting approximately thirteen Cincinnati Recreation Commission (CRC) licensed neighborhood childcare programs. This Emergency Ordinance also authorizes the Finance Director to deposit the grant funds into Recreation Federal Grant Projects Fund 324.

On November 16, 2022, the City Council approved Ordinance No. 0353-2022, which authorized the City Manager to apply for grant resources in an amount up to \$2,535,400 from the Ohio Child Care Stabilization Sub-Grant through the OCCRA and ODJFS for the purpose of supporting approximately thirteen of the CRC's licensed neighborhood childcare programs. CRC has since been notified of the grant award in the full amount of \$2,535,400.

The grant resources will allow CRC to increase the benefits provided by licensed neighborhood childcare programs in neighborhoods such as Bond Hill, Corryville, East Walnut Hills, Evanston, Madisonville, Millvale, Northside, Pleasant Ridge, Price Hill, Sayler Park, Walnut Hills, West End, and Winton Hills.

There are no new FTEs or local match requirements associated with this grant.

Providing resources for neighborhood childcare programs is in accordance with “Collaborate” goal to “[w]ork in synergy with the Cincinnati community” and strategy to “[u]nite our communities,” as described on pages 209-212 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to accept and utilize the grant resources before the deadline of June 30, 2023.

The Administration recommends passage of this Emergency Ordinance.

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



Attachment

**EMERGENCY**

**KKF**

**- 2023**

**AUTHORIZING** the City Manager to accept and appropriate a grant in an amount of up to \$2,535,400 from the Ohio Child Care Stabilization Sub-Grant through the Ohio Child Care Resource and Referral Association and the Ohio Department of Job and Family Services (ALN 93.575) for the purpose of supporting approximately thirteen Cincinnati Recreation Commission licensed neighborhood childcare programs; and **AUTHORIZING** the Finance Director to deposit the grant funds into Recreation Federal Grant Projects Fund 324.

WHEREAS, on November 16, 2022, Council approved Ordinance No. 353-2022, which authorized the City Manager to apply for grant resources in an amount up to \$2,535,400 from the Ohio Child Care Stabilization Sub-Grant through the Ohio Child Care Resource and Referral Association and the Ohio Department of Job and Family Services for the purpose of supporting approximately thirteen Cincinnati Recreation Commission (“CRC”) licensed neighborhood childcare programs; and

WHEREAS, CRC was notified the City was awarded a grant in the amount of \$2,535,400; and

WHEREAS, the grant funding will allow CRC to increase the benefits provided to the Cincinnati community through licensed neighborhood childcare programs in the neighborhoods of Bond Hill, Corryville, East Walnut Hills, Evanston, Madisonville, Millvale, Northside, Pleasant Ridge, Price Hill, Saylor Park, Walnut Hills, West End, and Winton Hills; and

WHEREAS, there are no additional FTEs associated with this grant, and there are no matching fund requirements; and

WHEREAS, providing resources for neighborhood childcare programs is in accordance with the “Collaborate” goal to “[w]ork in synergy with the Cincinnati community” and strategy to “[u]nite our communities,” as described on pages 209-212 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is authorized to accept and appropriate a grant of up to \$2,535,400 from the Ohio Child Care Stabilization Sub-Grant through the Ohio Child Care Resource and Referral Association and the Ohio Department of Job and Family Services (ALN

{00379504-4}

93.575) for the purpose of supporting approximately thirteen Cincinnati Recreation Commission licensed neighborhood childcare programs.

Section 2. That the Finance Director is authorized to deposit the funds into Recreation Federal Grant Projects Fund 324.

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

Section 4. That this ordinance shall 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 accept and utilize the grant resources before the deadline of June 30, 2023.

Passed: \_\_\_\_\_, 2023

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

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

March 8, 2023

**To:** Mayor and Members of City Council 202300757  
**From:** Sheryl M. M. Long, City Manager  
**Subject:** Emergency Ordinance – Police: Amending Ordinance No. 0243-2022

Attached is an Emergency Ordinance captioned:

**AMENDING** Ordinance No. 243-2022 to authorize the City Manager to accept the transfer of equipment purchased by the Hamilton County Emergency Management Agency with funds awarded through the FY 2022 Homeland Security Grant Program, Urban Area Security Initiative (ALN 97.067).

This Emergency Ordinance would amend Ordinance No. 0243-2022 to authorize the City Manager to accept the transfer of equipment purchased by the Hamilton County Emergency Management Agency (HCEMA) with funds awarded through the FY 2022 Homeland Security Grant Program, Urban Area Security Initiative (UASI) (ALN 97.067).

On August 3, 2022, the City Council passed Ordinance No. 0243-2022, which authorized the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$591,655, effective FY 2023, from the United States Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), through the FY 2022 Homeland Security Grant Program, Urban Area Security Initiative (ALN 97.067), for the purpose of providing funding for clothing, communications equipment, physical barriers, and license plate reader mobile cameras for the Cincinnati Police Department's Special Weapons and Tactics (SWAT) team and Civil Disturbance Response Team (CDRT).

The grant was ultimately awarded to the Cincinnati Police Department in the amount of \$310,000, consisting of \$50,000 for the purchase of tactical entry communications equipment, \$196,000 for the purchase of physical barrier devices, and \$64,000 for the purchase of intelligence surveillance equipment. When the City Council originally approved Ordinance No. 0243-2022, it was mistakenly believed that the City would receive the grant funds through the Hamilton County Emergency Management Agency, then use those funds to purchase the SWAT equipment. In actuality, HCEMA is the regional fiscal agent and uses the grant funds to purchase the SWAT equipment for the City, then transfers ownership of the SWAT equipment to the City. Ordinance No. 0243-2022 must be amended to allow the City to accept the SWAT equipment purchased by HCEMA.

The reason for the emergency is the immediate need to accept the transfer of Grant-funded equipment in a timely manner.

The Administration recommends passage of this Emergency Ordinance.

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

Attachment

**EMERGENCY**

**IMD**

**- 2023**

**AMENDING** Ordinance No. 243-2022 to authorize the City Manager to accept the transfer of equipment purchased by the Hamilton County Emergency Management Agency with funds awarded through the FY 2022 Homeland Security Grant Program, Urban Area Security Initiative (ALN 97.067).

WHEREAS, on August 3, 2022, Council approved Ordinance No. 243-2022, which authorized the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$591,655, effective FY 2023, from the United States Department of Homeland Security, Federal Emergency Management Agency, through the FY 2022 Homeland Security Grant Program, Urban Area Security Initiative (ALN 97.067) (the “Grant”), for the purpose of providing funding for clothing, communications equipment, physical barriers, and license plate reader mobile cameras for the Cincinnati Police Department’s Special Weapons and Tactics team and Civil Disturbance Response Team; and

WHEREAS, the Grant funds that were ultimately awarded to the City totaled \$310,000, consisting of \$50,000 for the purchase of tactical entry communications equipment, \$196,000 for the purchase of physical barrier devices, and \$64,000 for the purchase of intelligence surveillance equipment (collectively, “SWAT Equipment”); and

WHEREAS, the Hamilton County Emergency Management Agency (“HCEMA”) serves as the regional fiscal agent for the Grant funds; and

WHEREAS, when Council approved Ordinance No. 0243-2022, it was believed that the City would receive the Grant funds through HCEMA, then use those Grant funds to purchase the SWAT Equipment; and

WHEREAS, in actuality, HCEMA uses the Grant funds to purchase the SWAT Equipment for the City, then transfers ownership of the SWAT Equipment to the City; and

WHEREAS, Ordinance No. 0243-2022 must be amended to allow the City to accept the SWAT Equipment purchased by HCEMA with the Grant funds; now, therefore;

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

Section 1. That Sections 1, 3, and 4 of Ordinance No. 0243-2022, approved by Council on August 3, 2022, are hereby amended as follows:

Section 1. That the City Manager is hereby authorized to apply for, ~~accept, and appropriate~~ a grant in the amount of up to \$591,655, effective FY 2023, from the United States Department of Homeland Security, Federal Emergency Management Agency, through the FY 2022 Homeland Security Grant Program, Urban Area Security Initiative (ALN 97.067) (the "Grant"), for the purpose of providing funding for clothing, communications equipment, physical barriers, and license plate reader mobile cameras for the Cincinnati Police Department's Special Weapons and Tactics team and Civil Disturbance Response Team, and to accept the transfer of equipment purchased by the Hamilton County Emergency Management Agency with funds awarded through the Grant.

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

~~Section 4~~ 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 apply for the Grant funds and accept the awarded funds transfer of Grant-funded equipment in a timely manner.

Section 2. That Section 2 of Ordinance No. 0243-2022 is hereby deleted in its entirety.

Section 3. That all terms of Ordinance No. 243-2022 not amended or removed in this Ordinance remain in full force and effect.

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 accept the transfer of Grant-funded equipment in a timely manner.

Passed: \_\_\_\_\_, 2023

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

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

\_\_\_\_\_  
Deletions are struck through. Additions are underlined.

March 8, 2023

**To:** Mayor and Members of City Council 202300758  
**From:** Sheryl M. M. Long, City Manager  
**Subject:** **Emergency Ordinance – Health: Ohio Environmental Protection Agency Water Pollution Control Loan Fund Grant**

---

Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the City Manager to apply for, accept, and appropriate a grant in an amount of up to \$50,000 from the Ohio Environmental Protection Agency’s Water Pollution Control Loan Fund for the purpose of providing financial aid to Cincinnati homeowners with defective household sewage treatment systems; and **AUTHORIZING** the Director of Finance to deposit the grant funds into Public Health Research Fund revenue account no. 350x8536.

This Emergency Ordinance authorizes the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$50,000 from the Ohio Environmental Protection Agency’s (OEPA) Water Pollution Control Loan Fund (WPCLF) to help provide financial assistance to Cincinnati homeowners with defective household sewage treatment systems. This Emergency Ordinance authorizes the Finance Director to deposit the grant funds into Public Health Research Fund revenue account no. 350x8536.

There are no new FTEs associated with this grant and no local match is required.

The Cincinnati Health Department applied for the grant on August 31, 2022, and was notified of the status of receiving the award on January 30, 2023, but funding will not be accepted without authorization from the City Council.

Acceptance of the OEPA WPCLF grant is in accordance with the “Sustain” goal to “[b]ecome a healthier Cincinnati” as described on pages 181-192 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to provide funding to assist Cincinnati homeowners with expenses associated with defective household sewage treatment systems that can lead to public health issues.

The Administration recommends passage of this Emergency Ordinance.

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



Attachment



**EMERGENCY**

**IMD**

- **2023**

**AUTHORIZING** the City Manager to apply for, accept, and appropriate a grant in an amount of up to \$50,000 from the Ohio Environmental Protection Agency’s Water Pollution Control Loan Fund for the purpose of providing financial aid to Cincinnati homeowners with defective household sewage treatment systems; and **AUTHORIZING** the Director of Finance to deposit the grant funds into Public Health Research Fund revenue account no. 350x8536.

WHEREAS, a grant is available from the Ohio Environmental Protection Agency’s (“OEPA”) Water Pollution Control Loan Fund (“WPCLF”), and funding from the OEPA WPCLF grant will assist Cincinnati homeowners with expenses associated with defective household sewage treatment systems; and

WHEREAS, there is no local match required and no FTEs associated with the OEPA WPCLF grant; and

WHEREAS, the Cincinnati Health Department applied for the OEPA WPCLF grant on August 31, 2022, and was notified of the status of receiving the award on January 30, 2023, but funding will not be accepted without authorization from Council; and

WHEREAS, acceptance of the OEPA WPCLF grant is in accordance with the “Sustain” goal to “[b]ecome a healthier Cincinnati” as described on pages 181-192 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is authorized to apply for, accept, and appropriate a grant in an amount up to \$50,000 from the Ohio Environmental Protection Agency’s Water Pollution Control Loan Fund for the purpose of providing financial assistance to Cincinnati homeowners with defective household sewage treatment systems.

Section 2. That Council hereby authorizes the Director of Finance to deposit the grant funds into Public Health Research Fund revenue account no. 350x8536.

Section 3. That the proper City officials are authorized to do all things necessary and proper to comply with the terms of this grant and Sections 1 and 2 hereof.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to provide funding to assist Cincinnati homeowners with expenses associated with defective household sewage treatment systems that can lead to public health issues.

Passed: \_\_\_\_\_, 2023

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

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

March 8, 2023

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

202300755

**From:** Sheryl M. M. Long, City Manager

**Subject: Ordinance – DOTE: CROWN Donation for Wasson Way Trail**

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Attached is an Ordinance captioned:

**AUTHORIZING** the transfer and appropriation of a donation by the Cincinnati Riding Or Walking Network in an amount up to \$1,115,000 from the unappropriated surplus of Wasson Way Trail Donations Fund No. 437 to capital improvement program project account no. 980x232x232371, “Wasson Way Trail,” for the purpose of providing resources to plan, design, and construct future phases of the Wasson Way Trail Network, a shared-use path for bicycles, as well as for the labor, materials, and technologies needed to plan, design, acquire right-of-way, build, survey, and inspect the improvements.

This Ordinance authorizes the transfer and appropriation of a donation by the Cincinnati Riding Or Walking Network (CROWN) in an amount up to \$1,115,000 from the unappropriated surplus of Wasson Way Trail Donations Fund No. 437 to existing capital improvement program project account no. 980x232x232371, “Wasson Way Trail,” for the purpose of providing resources to plan, design, and construct future phases of the Wasson Way Trail Network.

Ordinance No. 0132-2018 was passed on June 6, 2018 and authorized the City Manager and City officials to solicit donations for the Wasson Way Trail Network. Ordinance No. 0132-2018 also established Fund No. 437, “Wasson Way Trail Donations,” and authorized the City Manager to review and accept donations into the fund for the purpose of providing resources for the Wasson Way Trail Network.

This donation represents the first donation from CROWN to reimburse the City for local match requirements associated with the Federal Surface Transportation Block Grants awarded for Wasson Way Phases 3, 4, 5, and 6A. The CROWN donation does not require matching resources or new FTEs.

The Wasson Way Trail Network is in accordance with the “Connect” goal to “[d]evelop an efficient multi-modal transportation system that supports neighborhood livability” as well as with strategies to “[e]xpand options for non-automotive travel” and to “[p]lan, design, and implement a safe and sustainable transportation system,” as described on pages 129-138 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

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

Attachment



**AUTHORIZING** the transfer and appropriation of a donation by the Cincinnati Riding Or Walking Network in an amount up to \$1,115,000 from the unappropriated surplus of Wasson Way Trail Donations Fund No. 437 to capital improvement program project account no. 980x232x232371, “Wasson Way Trail,” for the purpose of providing resources to plan, design, and construct future phases of the Wasson Way Trail Network, a shared-use path for bicycles, as well as for the labor, materials, and technologies needed to plan, design, acquire right-of-way, build, survey, and inspect the improvements.

WHEREAS, Ordinance No. 132-2018, passed June 6, 2018, authorized the City Manager and City officials to solicit donations for the Wasson Way Trail Network from the Cincinnati business community, individual benefactors, and other available sources; and

WHEREAS, Ordinance No. 132-2018 also established Fund No. 437, “Wasson Way Trail Donations,” and authorized the City Manager to review and accept donations into the fund for the purpose of providing funding for the Wasson Way Trail Network; and

WHEREAS, the Cincinnati Riding Or Walking Network (“CROWN”) fundraising group is making a donation which represents the first payment from CROWN to reimburse the City for local match requirements associated with the Federal Surface Transportation Block Grants awarded for Wasson Way Phases 3, 4, 5, and 6A; and

WHEREAS, CROWN’s donation does not require any local matching resources, and there are no new FTEs associated with this donation; and

WHEREAS, the Wasson Way Trail Network is in accordance with the “Connect” goal to “[d]evelop an efficient multi-modal transportation system that supports neighborhood livability” as well as with strategies to “[e]xpand options for non-automotive travel” and to “[p]lan, design, and implement a safe and sustainable transportation system,” as described on pages 129-138 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the transfer and appropriation of an amount up to \$1,115,000 from the unappropriated surplus of Wasson Way Trail Donations Fund No. 437 to capital improvement program project account no. 980x232x232371, “Wasson Way Trail,” is hereby authorized for the purpose of providing resources to plan, design, and construct future phases of the Wasson Way

Trail Network, a shared-use path for bicycles, as well as for the labor, materials, and technologies needed to plan, design, acquire right-of-way, build, survey, and inspect the improvements.

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

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

Passed: \_\_\_\_\_, 2023

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

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

March 08, 2023

To: Mayor and Members of City Council  
From: Sheryl M.M. Long, City Manager  
Subject: Ordinance Utility Easement Garden Grove Development

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202300767

Attached is an Ordinance captioned:

**ACCEPTING AND CONFIRMING** the grant of a public utility easement in favor of the City of Cincinnati for water mains and related fixtures, equipment, and appurtenances through certain real property being part of the Garden Grove Development in Delhi Township, Hamilton County, Ohio in accordance with the plat entitled *GCWW Easement Plat Garden Grove Development, 643 Covedale Avenue, WSL 3681 – Garden Grove – E-1089*, as recorded in Plat Book 489, Page 91, Hamilton County, Ohio Recorder’s Office.

The attached ordinance accepts and confirms the grant of a public utility easement in favor of the City of Cincinnati for water mains and related fixtures, equipment, and appurtenances through portions of real property within the Garden Grove Development in Delhi Township, Hamilton County, Ohio in accordance with the plat entitled *GCWW Easement Plat Garden Grove Development, 643 Covedale Avenue, WSL 3681-Garden Grove-E-1089* and which easement has been granted by 643 COV, LLC, an Ohio limited liability company. The plat has been examined and approved as to its technical features by the Greater Cincinnati Water Works Chief Engineer and the City Manager in consultation with the Greater Cincinnati Water Works recommends that Council accept and confirm the acceptance of the public utility easement.

The Administration recommends passage of this Ordinance.

cc: Verna J. Arnette, GCWW, Interim Executive Director

**ACCEPTING AND CONFIRMING** the grant of a public utility easement in favor of the City of Cincinnati for water mains and related fixtures, equipment, and appurtenances through certain real property being part of the Garden Grove Development in Delhi Township, Hamilton County, Ohio in accordance with the plat entitled *GCWW Easement Plat Garden Grove Development, 643 Covedale Avenue, WSL 3681 – Garden Grove – E-1089*, as recorded in Plat Book 489, Page 91, Hamilton County, Ohio Recorder’s Office.

WHEREAS, 643 COV, LLC, an Ohio limited liability company, has granted a public utility easement in favor of the City of Cincinnati for water mains and related fixtures, equipment, and appurtenances through certain real property located in Delhi Township, Hamilton County, Ohio, as more particularly depicted and described on the plat entitled *GCWW Easement Plat Garden Grove Development, 643 Covedale Avenue, WSL 3681 – Garden Grove – E-1089*, as recorded in Plat Book 489, Page 91, Hamilton County, Ohio Recorder’s Office; and

WHEREAS, the aforementioned plat has been examined and approved as to its technical features by the Greater Cincinnati Water Works Chief Engineer, who has found it to be correct; and

WHEREAS, based on the foregoing, the City Manager, upon consultation with the Greater Cincinnati Water Works, recommends that Council accept and confirm the acceptance of the aforementioned public utility easement; now, therefore,

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

Section 1. That the easement granted by 643 COV, LLC, an Ohio limited liability company, to the City of Cincinnati for the construction, installation, reconstruction, operation, maintenance, repair, replacement, modification, and removal of water mains and related fixtures, equipment, and appurtenances through certain real property in Delhi Township, Hamilton County, Ohio, as more particularly depicted and described on the plat entitled *GCWW Easement Plat Garden Grove Development, 643 Covedale Avenue, WSL 3681 – Garden Grove – E-1089*, as recorded in Plat Book 489, Page 91, Hamilton County, Ohio Recorder’s Office and incorporated

herein by reference, is hereby accepted and confirmed. The real property encumbered by the easement is more particularly described as follows:

Situated in Section 12, Town 3, Fractional Range 1 Between the Miamis, Delhi Township, Hamilton County, Ohio and being all of 643 COV, LLC as recorded in Official Record 14335, Page 1702, Official Record 14335, Page 1980 and Official Record 14335, Page 2955 of the Hamilton County. Ohio Recorder's Office, containing 6.4255 acres being further described as follows:

Begin at a found 5/8" iron pin capped "Allen" at the northeast corner of Foley Square Condominium, Phase II as recorded in Plat Book 326, Page 7, said pin being on the west right of way of Covedale Avenue (40') and being the True Point of Beginning;

thence, from the True Point of Beginning, departing the west right of way of said Covedale Avenue with and departing said Foley Square Condominium, Phase II, North 88° 34' 17" West, 294.90 feet to a set 5/8" iron pin at a north corner of Foley Square Condominium, Phase I, as recorded in Plat Book 323, Page 24;

thence, with said Foley Square Condominium, Phase I, South 05° 50' 43" West, 2.92 feet to a set 5/8" iron pin;

thence, North 88° 34' 17" West, 277.52 feet to a set 5/8" iron pin on the northwest corner of Steven L. & Tracey A. Schatzman as recorded in Deed Book 4326, Page 1391, said pin being on the east line of Savanna G. Hayes as recorded in Official Record 13722, Page 1780;

thence, departing said Schatzman and with said Hayes the following two courses: North 05°55' 43" East, 75.78 feet to a set 5/8" iron pin;

thence, North 88° 34' 17" West, 75.00 feet to a set 5/8" iron pin on the east line of Lot 48 of Melody Acres Subdivision, Block "B" as recorded in Plat Book 126, Page 53;

thence, departing said Hayes and with the east line of said Melody Acres Subdivision, Block "B", North 05° 55' 43' East, 367.92 feet to a set 5/8" iron pin at the southwest corner of the City of Cincinnati land as recorded in Deed Book 3141, Page 388;

thence, departing said Melody Acres Subdivision, Block "B" and with the south line of said City of Cincinnati land, South 88° 37' 23' East, passing a found 1-1/2" iron pipe at 351.72 feet, a found concrete monument at 641.82 feet, a total distance of 646.82 feet to a set 5/8" iron pin on the west right of way of said Covedale Avenue;



thence, departing said City of Cincinnati land and with the west right of way of said Covedale Avenue, South 05° 50' 43" West, 441.31 feet to the True Point of Beginning containing 6.4255 acres of land more or less subject to all legal highways, easements, restrictions and agreements of record.

Section 2. That the City Solicitor shall cause an authenticated copy of this ordinance to be recorded in the Hamilton County, Ohio Recorder's Office.

Section 3. That the proper City officers and officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance.

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2023

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

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

March 08, 2023

To: Mayor and Members of City Council  
From: Sheryl M.M. Long, City Manager  
Subject: Ordinance Utility Easement Dunlap Grove Subdivision

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202300768

Attached is an Ordinance captioned:

**ACCEPTING AND CONFIRMING** the grant of a public utility easement in favor of the City of Cincinnati for water mains and related fixtures, equipment, and appurtenances through certain real property being parts of Lot B and Lots 55 through 60 of the Dunlap Grove Subdivision in Colerain Township, Hamilton County, Ohio in accordance with the plat entitled *Water Line Easement Plat Dunlap Grove Subdivision*, as recorded in Plat Book 491, Page 93, Hamilton County, Ohio Recorder's Office.

The attached ordinance accepts and confirms the grant of a public utility easement in favor of the City of Cincinnati for water mains and related fixtures, equipment, and appurtenances through portions of real property within the Dunlap Grove Subdivision in Colerain Township, Ohio, in accordance with the plat entitled *Water Line Easement Plat Dunlap Grove Subdivision*, and which easement has been granted by Dunlap Development, LLC, an Ohio limited liability company. The plat has been examined and approved as to its technical features by the Greater Cincinnati Water Works Chief Engineer and the City Manager in consultation with the Greater Cincinnati Water Works recommends that Council accept and confirm the acceptance of the public utility easement.

The Administration recommends passage of this Ordinance.

cc: Verna J. Arnette, GCWW, Interim Executive Director

**ACCEPTING AND CONFIRMING** the grant of a public utility easement in favor of the City of Cincinnati for water mains and related fixtures, equipment, and appurtenances through certain real property being parts of Lot B and Lots 55 through 60 of the Dunlap Grove Subdivision in Colerain Township, Hamilton County, Ohio, in accordance with the plat entitled *Water Line Easement Plat Dunlap Grove Subdivision*, as recorded in Plat Book 491, Page 93, Hamilton County, Ohio Recorder's Office.

WHEREAS, Dunlap Development, LLC, an Ohio limited liability company, has granted a public utility easement in favor of the City of Cincinnati for water mains and related fixtures, equipment, and appurtenances through certain real property located in Colerain Township, Hamilton County, Ohio, as more particularly depicted and described on the plat entitled *Water Line Easement Plat Dunlap Grove Subdivision*, as recorded in Plat Book 491, Page 93, Hamilton County, Ohio Recorder's Office; and

WHEREAS, the aforementioned plat has been examined and approved as to its technical features by the Greater Cincinnati Water Works Chief Engineer, who has found it to be correct; and

WHEREAS, based on the foregoing, the City Manager, upon consultation with the Greater Cincinnati Water Works, recommends that Council accept and confirm the acceptance of the aforementioned public utility easement; now, therefore,

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

Section 1. That the easement granted by Dunlap Development, LLC, an Ohio limited liability company, to the City of Cincinnati for the construction, installation, reconstruction, operation, maintenance, repair, replacement, modification, and removal of water mains and related fixtures, equipment, and appurtenances through certain real property being parts of Lot B and Lots 55 through 60 of the Dunlap Grove Subdivision in Colerain Township, Hamilton County, Ohio in accordance with the plat entitled *Water Line Easement Plat Dunlap Grove Subdivision*, as recorded in Plat Book 491, Page 93, Hamilton County, Ohio Recorder's Office and incorporated herein by reference, is hereby accepted and confirmed.

Section 2. That the City Solicitor shall cause an authenticated copy of this ordinance to be recorded in the Hamilton County, Ohio Recorder's Office.

Section 3. That the proper City officers and officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance.

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2023

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

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

January 25, 2023

**To:** Mayor and Members of City Council 202300392

**From:** Sheryl M. M. Long, City Manager

**Subject:** **Emergency Ordinance – FY 2023 Mid-Year Budget Adjustment for Judgments Against the City Account**

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Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the transfer of \$1,480,602.25 from the General Fund balance sheet reserve account no. 050x2580, “Reserve for Weather Related Events, Other Emergency and One-Time Needs,” to the unappropriated surplus of General Fund 050; **AUTHORIZING** the transfer and appropriation of \$3,280,602.25 from the unappropriated surplus of General Fund 050 to the non-departmental Judgments Against the City General Fund non-personnel operating budget account no. 050x951x7400 for the purpose of satisfying a legal judgment against the City as well as associated legal fees in *White v. The City of Cincinnati*.

This Emergency Ordinance authorizes the transfer of \$1,480,602.25 from the General Fund balance sheet reserve account no. 050x2580, “Reserve for Weather Related Events, Other Emergency and One-Time Needs,” to the unappropriated surplus of General Fund 050. This Emergency Ordinance further authorizes the transfer and appropriation of \$3,280,602.25 from the unappropriated surplus of General Fund 050 to the non-departmental Judgments Against the City General Fund non-personnel operating budget account no. 050x951x7400 for the purpose of satisfying a legal judgment against the City as well as associated legal fees in *White v. The City of Cincinnati*.

City Council passed Ordinance No. 0448-1986 on December 17, 1986 enacting Chapter 807 of the Cincinnati Municipal Code (CMC), which authorized assessment of registration fees and penalties on alarm system users arising from issuance of false alarms. The City was a defendant in a lawsuit captioned *White v. The City of Cincinnati*, 2021-Ohio-4003, which challenged the fees and penalties contained in CMC Chapter 807.

The First Appellate District of Ohio reversed the trial court’s ruling and held that the residential and nonresidential alarm user fees imposed by CMC Chapter 807 were an unconstitutional tax. Therefore, the City has been ordered to pay an estimated judgment of \$2,559,486.25 to the plaintiffs in the litigation, as well as attorney fees of \$721,116.00.

The Finance Department has increased FY 2023 revenue estimates due to FY 2023 State Shared Revenues from the Local Government Fund exceeding estimates by \$1,800,000, which has increased the unappropriated surplus of the General Fund and will serve as a source for a portion of the settlement of the judgment. The General Fund balance sheet reserve account no. 050x2580, "Reserve for Weather Related Events, Other Emergency and One-Time Needs," is the source of funds for the remaining \$759,486.25 needed for the settlement payment to the plaintiffs and the \$721,116.00 for legal fees.

The reason for the emergency is the immediate need to meet a legally required deadline for payment of the judgment.

The Administration recommends passage of this Emergency Ordinance.

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

Attachment

## EMERGENCY

CFG

-2023

**AUTHORIZING** the transfer of \$1,480,602.25 from the General Fund balance sheet reserve account no. 050x2580, “Reserve for Weather Related Events, Other Emergency and One-Time Needs,” to the unappropriated surplus of General Fund 050; and **AUTHORIZING** the transfer and appropriation of \$3,280,602.25 from the unappropriated surplus of General Fund 050 to the non-departmental Judgments Against the City General Fund non-personnel operating budget account no. 050x951x7400 for the purpose of satisfying a legal judgment against the City as well as associated legal fees in *White v. The City of Cincinnati*.

WHEREAS, Council passed Ordinance No. 0448-1986 on December 17, 1986 enacting Chapter 807 of the Cincinnati Municipal Code (“CMC”), which authorized assessment of registration fees and penalties on alarm system users arising from issuance of false alarms; and

WHEREAS, the City was a defendant in a lawsuit captioned *White v. The City of Cincinnati*, 2021-Ohio-4003 (“the litigation”), which challenged the fees and penalties contained in CMC Chapter 807; and

WHEREAS, the First Appellate District of Ohio reversed the trial court’s ruling in the litigation and held that the residential and nonresidential alarm user fees imposed by CMC Chapter 807 were an unconstitutional tax; and

WHEREAS, the City has been ordered to pay an estimated judgment of \$2,559,486.25 to the plaintiffs in the litigation, as well as attorney fees of \$721,116; and

WHEREAS, in order to comply with a legally required deadline, the attorney fees have already been paid from the Cincinnati Police Department’s General Fund non-personnel operating budget, but the payment from that fund needs to be reimbursed; and

WHEREAS, an additional \$2,559,486.25 is needed for the settlement payment to the plaintiffs; and

WHEREAS, the Finance Department has increased FY 2023 revenue estimates due to FY 2023 State Shared Revenues from the Local Government Fund exceeding estimates by \$1,800,000, which has increased the unappropriated surplus of the General Fund, which will serve as a source for a portion of the settlement of the judgment; and

WHEREAS, the General Fund balance sheet reserve account no. 050x2580, “Reserve for Weather Related Events, Other Emergency and One-Time Needs,” is the source of funds for the remaining \$759,486.25 needed for the settlement payment to the plaintiffs and the \$721,116 for

the reimbursement of the Cincinnati Police Department’s General Fund non-personnel operating budget; now, therefore,

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

Section 1. That the sum of \$1,480,602.25 is hereby transferred from the General Fund balance sheet reserve account no. 050x2580, “Reserve for Weather Related Events, Other Emergency and One-Time Needs,” to the unappropriated surplus of General Fund 050.

Section 2. That the sum of \$ 3,280,602.25 is hereby transferred and appropriated from the unappropriated surplus of General Fund 050 to the non-departmental Judgments Against the City General Fund non-personnel operating budget account no. 050x951x7400 for the purpose of satisfying a legal judgment against the City as well as associated legal fees in *White v. The City of Cincinnati*.

Section 3. That the appropriate City officials are hereby authorized to do all things necessary and proper to implement the provisions of Sections 1 and 2 herein.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to meet a legally required deadline for payment of the judgment.

Passed: \_\_\_\_\_, 2023

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

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



March 13, 2023

**To:** Members of the Budget and Finance Committee

**From:** Sheryl M. M. Long, City Manager 

202300841

**Subject:** 3CDC Presentation Regarding the Whex Garage and Convention Center District Plan

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Attached is the presentation from 3CDC that details the Convention Center District Plan.



# 3CDC

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CINCINNATI CENTER CITY  
DEVELOPMENT CORPORATION



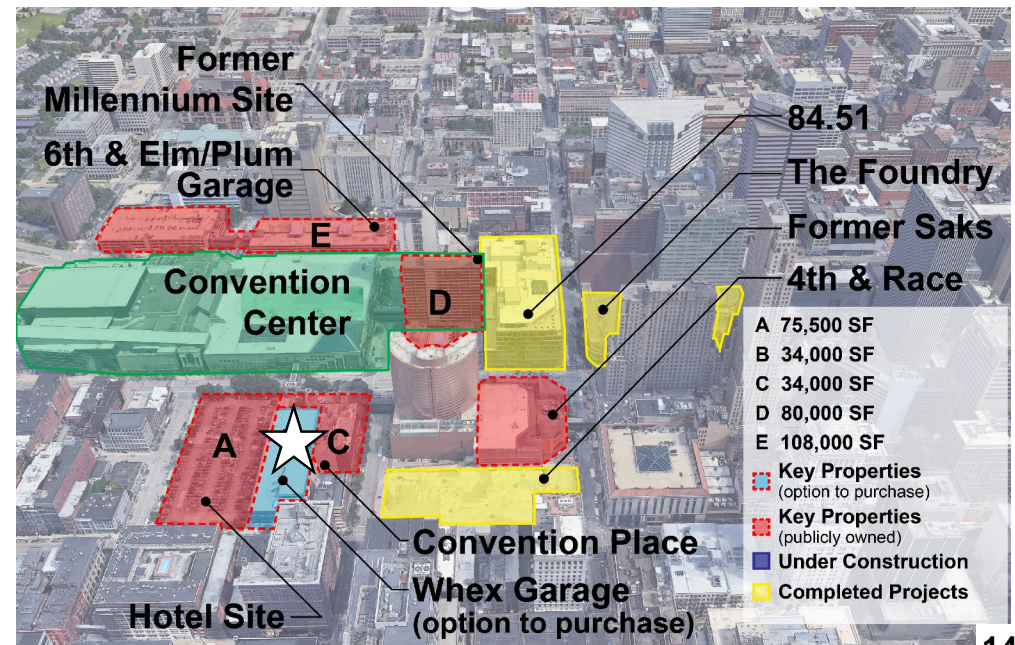
## Development Plan

- Approximately \$200 million renovation of the Duke Energy Convention Center including new public plaza on the former Millennium Hotel site
- New Convention Headquarters Hotel on the parking lot at 5<sup>th</sup> and Plum
- Redevelopment of other publicly controlled assets in the surrounding area
  - Purchase Whex Parking Garage and position for redevelopment in conjunction with the hotel
  - Demolish 435 Elm and prep site for future mixed-use development



## Overview

- Whex Garage
  - ✓ 780-space parking garage
  - ✓ Adjacent to new Convention Headquarters Hotel site
  - ✓ 3CDC has purchase option: \$11.9MM
  - ✓ Port Authority would hold the property, similar to other Convention District assets
  - ✓ 3CDC will lease/operate garage and create redevelopment plan



## Financing Overview

Total Uses	12,242,424
Sources	
ODOD	7,000,000
CEFIII	4,018,182
Equity	1,224,242
<u>Total Sources</u>	<u>12,242,424</u>

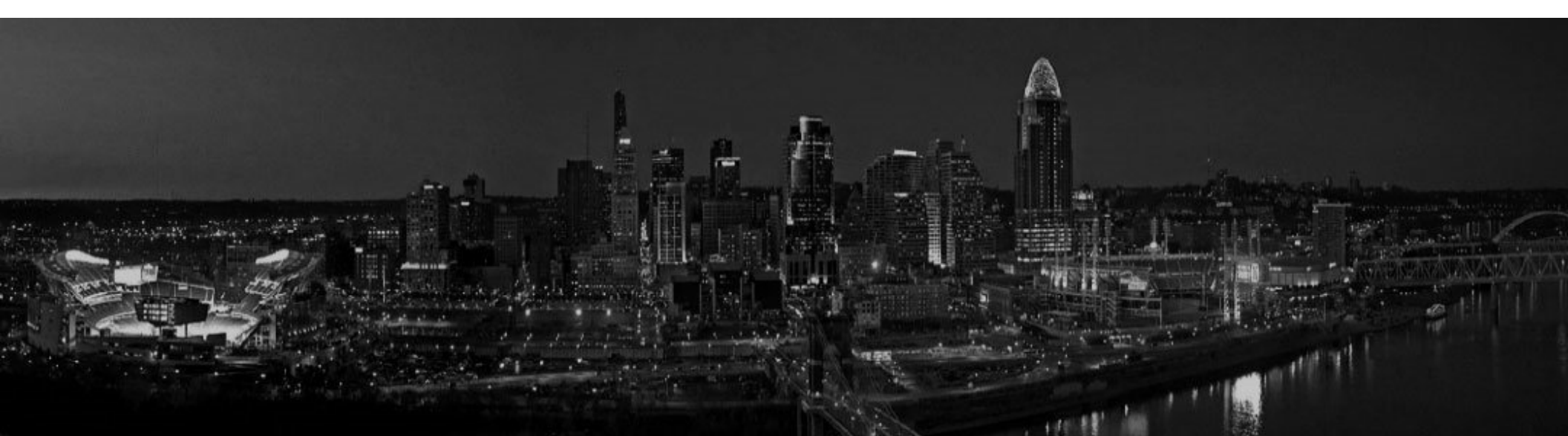
ODOD – 166 Loan	
Amount	\$ 7,000,000
Interest Rate (Yr 1-5)	0%
Interest Rate (Yr 6-7)	1%
Amortization	Interest Only
Term	7 years
Annual Fees	0.250%

CEFII Loan	
Amount	\$ 4,018,182
Interest Rate	2%
Amortization	30 years
Term	7 years

- Whex Garage acquisition is critical to the Convention District Plan
  - The garage will provide required parking for Convention Headquarter Hotel
    - ✓ This will result in major savings by eliminating the need to build parking within the hotel development itself, lowering the subsidy required by the hotel
  - Garage will also provide public parking for Convention Center and support additional development on surrounding publicly owed sites

- City Request:
  - \$275,000 annual appropriation from Downtown/Riverfront TIF District to support State of Ohio loan, which will finance acquisition
    - ✓ Matched by \$275,00 annual appropriation from Hamilton County
    - ✓ Funds will be held in escrow to backstop loan and are not anticipated to be needed to fund annual debt service
    - ✓ 7-year maximum term
  - 3CDC will create a redevelopment plan for the garage in conjunction with the construction of the new headquarter hotel and Convention Center





THANK YOU

