

FIRST AMENDMENT
to
Community Reinvestment Area LEED Tax Exemption Agreement

THIS FIRST AMENDMENT TO COMMUNITY REINVESTMENT AREA LEED TAX EXEMPTION AGREEMENT (this "Amendment") is made and entered into on the Effective Date (as defined on the signature page hereof) by and among the **CITY OF CINCINNATI**, an Ohio municipal corporation (the "City"), and **MARKET SQUARE I, LLC**, an Ohio limited liability company ("Market Square"), and **1826 RACE STREET, LLC**, an Ohio limited liability company ("Race Street LLC"; and, together with Market Square, the "Company").

Recitals:

A. The City and Market Square are parties to a *Community Reinvestment Area LEED Tax Exemption Agreement* dated February 10, 2016 (the "Agreement"), pertaining to the remodeling of existing buildings located at certain real property in the Over-the-Rhine neighborhood of Cincinnati more particularly identified therein (collectively, the "Property") into residential and commercial space on the terms and conditions of the Agreement (the "Project"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement.

B. The Company completed the Improvements to the Property as required by the terms of the Agreement.

C. Pursuant to the Statute, and more particularly Ohio Revised Code ("ORC") Section 3735.67(D)(1), a legislative authority may extend a period of exemption from real property taxation for up to 10 years if the property is a structure of historical or architectural significance, is a certified historic structure that has been subject to federal tax treatment under 26 U.S.C. 47 and 170(h), and the residential units within the structure have been leased to individual tenants for 5 consecutive years.

D. The Company has represented to the City that the Property may satisfy the aforementioned criteria and may be eligible for an extension of real property tax exemption under ORC Section 3735.67(D)(1), and has requested the City grant a conditional extension of the real property tax exemption, which was initially for a period of 12 years.

E. The City, upon the recommendation of the Department of Community and Economic Development, is willing to amend the Agreement to potentially extend the real property tax exemption provided under the Agreement for a period of up to 10 years in consideration of the Company's commitment to lease and make available 40% of the residential units on the Property to families at or below 80% Area Median Income ("AMI") for Cincinnati, as established by the U.S. Department of Housing and Urban Development, and as may be updated from time to time, all as further described herein. The City is agreeable to doing so on and subject to the terms and conditions of this Amendment.

F. Following the execution of the Agreement, the City and the Board of Education entered into that certain *Tax Incentive Agreement*, executed on April 28, 2020, pursuant to which the Board of Education approved exemptions of up to 100% of Community Reinvestment Area projects on and after April 28, 2020, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.

G. Market Square has also conveyed two parcels included within the Property, being 1818 Race Street (Auditor's Parcel No. 094-0008-0315-00) (the "Race St. Property") and 101 W. Elder Street (Auditor's Parcel No. 094-0008-0184-00) (the "Elder St. Property").

H. Market Square transferred the Race St. Property to Race Street LLC pursuant to that certain *Limited Warranty Deed* dated September 21, 2023, and recorded on September 25, 2023, in OR 15007, Page 2018, Hamilton County, Ohio Records.

I. Market Square transferred the Elder St. Property to Valentine Feghali, a married woman whose spouse is Georges M. Feghali, pursuant to that certain *Limited Warranty Deed* dated effective March 15, 2023, and recorded on March 17, 2023, in OR 14875, Page 362, Hamilton County, Ohio Records.

J. ORC Section 3735.671 requires that the City enter into a written agreement with the owner of the property that is to be abated pursuant to the City's Community Reinvestment Area Program.

K. To address the change in ownership of the Race St. Property, Race Street LLC is joining the Agreement as a party and consenting to the Agreement.

L. To address the change in ownership of the Elder St. Property, the City, Market Square, and Valentine Feghali entered into that certain *Amended and Restated CRA Agreement*, dated on or about the Effective Date hereof, whereby Market Square assigned, and Valentine Feghali assumed, the Agreement as it relates solely to the Elder St. Property (the "Elder Agreement").

M. Execution of this Amendment was authorized by Ordinance No. ___-___, passed by City Council on _____, ____.

NOW, THEREFORE, the parties agree as follows:

1. Property Description. The parties hereby agree and acknowledge that, from and after the effective date of the Elder Agreement, the Elder St. Property is no longer included within the defined "Property" for purposes of the Agreement. All remaining obligations associated with the Elder St. Property shall be governed by the Elder Agreement.

2. Joinder of Race Street LLC. Race Street LLC hereby agrees that it is joined to the Agreement as a party thereto. Race Street LLC consents to the Agreement and agrees to be bound by the terms thereof as part of the "Company" under the Agreement. Solely for the purposes of the Agreement, and without consenting to further transfers, assignments, or anything other than the joinder of Race Street LLC to the Agreement, the City hereby consents to the joinder of Race Street LLC to the Agreement. The City, Market Square, and Race Street LLC hereby agree that, on and after the Effective Date of this Amendment, Race Street LLC will be a party to the Agreement.

3. Joint and Several Liability. The obligations and liability of the parties comprising the Company under this Agreement are joint and several, except as otherwise expressly indicated. In dealing with said entities, the City shall be entitled to rely upon information, notices, documents, and the like received by the City from only one of said entities to the same extent as if the same had been provided to the City by all entities.

4. Board of Education of the Cincinnati School District. Recital L. and Recital M. are hereby deleted and replaced with the following:

L. The Board of Education of the Cincinnati School District (the "Board of Education"), pursuant to an agreement with the City entered into on July 2, 1999 (as amended), and that certain *Tax Incentive Agreement*, effective as of April 28, 2020, has approved exemptions of up to 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.

M. The Company has entered into an agreement with the Board of Education for the Initial Term (as defined below), which requires the Company to pay the

Board of Education amounts equal to 25% 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 "1999 Board of Education Agreement"). In the event that the City grants the Historic Extension (as defined in Section 36), the Company will enter into an agreement with the Board of Education for the term of the Historic Extension, which will require the Company to pay the Board of Education amounts equal to 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 "2020 Board of Education Agreement"). The 1999 Board of Education Agreement and the 2020 Board of Education Agreement are collectively referred to herein as the "Board of Education Agreement".

5. Reporting. Section 17 of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 17. Annual Review and Report; Affordability Reporting Requirements.

A. 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.

B. Affordability Reporting Requirements. In addition to the Annual Review and Report, commencing on March 1, 2026, and continuing each year thereafter, the Company shall verify its continued compliance with the affordability terms contained in Exhibit C (Affordability Requirements) hereto, by certifying project rents and verifying tenant eligibility by submitting to the City a *Tenant Profile Income Verification Form* for all households occupying Affordability Units. The *Tenant Profile Income Verification Form* must be signed by and certified by each tenant and indicate that the information is complete and accurate.

6. Affordability Requirements. The following new Section 35 shall be added and incorporated into the Agreement:

Section 35. Affordability Requirements. The Company shall lease and make available at least 7 residential units on the Property (the "Affordable Units") to qualifying households with a household income that is at or below 80% AMI for comparably sized households (the "Affordability Requirements") for a period beginning on January 1, 2025, and continuing through the end of the abatement period provided pursuant to this Agreement, including the term of the Historic Extension, if any (the "Affordability Period"). During the Affordability Period, the Company shall: (i) maintain the Affordable Units and the Property as decent, safe, and sanitary housing in good repair and in compliance with all City of Cincinnati Building Code requirements, (ii) lease the Affordable Units to qualifying households of individuals and families at affordable rents in accordance with those requirements set forth in Exhibit C, and (iii) comply with all other Affordability Requirements set forth in Exhibit C. The Company shall execute an affidavit of facts relating to title memorializing the Company's commitment to abide by the Affordability Requirements in the form of Exhibit D (Form of Affidavit) hereto (the "Affordability Affidavit"), or in such other form as may be required by the City. The Affordability Affidavit shall be recorded at the Company's sole expense with a copy delivered to the City within 3 days of recording.

7. Historic Extension. The following new Section 36 shall be added and incorporated into the Agreement:

Section 36. 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 (the "Historic Extension"). Once the Company has satisfied the requirements of the Statute and no later than 180 days prior to the end of the initial abatement term pursuant to this Agreement (the "Initial Term"), 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 each parcel constituting the Property for the Historic Extension, and (iii) operating revenue and expenses for the prior 5 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 and the City's confirmation that the Company is in compliance with the Affordability Requirements, if the Property qualifies for the Historic Extension, the parties will execute a mutually satisfactory amendment to this Agreement to extend the abatement term for a period of 10 years.

8. General Indemnity. The following new Section 37 shall be added and incorporated into the Agreement:

Section 37. General Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, the Company 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 (collectively, "Claims") suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of the Company, its agents, employees, contractors, subcontractors, licensees, invitees, or anyone else acting at the request of the Company in connection with the Project. The Company's indemnification obligations under this paragraph shall survive the termination or expiration of this Agreement with respect to Claims arising prior thereto.

9. Exhibits. Exhibit C (Affordability Requirements) and Exhibit D (Form of Affidavit) attached hereto, are hereby incorporated into and made a part of the Agreement and, on and after the Effective Date hereof, shall be deemed to be Exhibit C and Exhibit D for all purposes of the Agreement.

10. General Provisions.

(A) Representations and Warranties. Market Square and Race Street LLC, each on behalf of itself, hereby represent and warrant to the City that all representations and warranties made by the Company in the Agreement continue to be true and correct as to Market Square and Race Street LLC, respectively, as of the Effective Date of this Amendment.

(B) Release. In consideration of the City's execution of this Amendment, the Company hereby waives any and all defaults or failures to observe or perform any of the City's obligations under the Agreement and any other liability of any kind on the part of the City to the extent any such default, failure, or liability occurred or arose before the Effective Date of this Amendment.

(C) Ratification. All terms of the Agreement not amended hereby or not inconsistent herewith shall remain in full force and effect, and the Agreement, as amended hereby, is hereby ratified and reaffirmed by the parties.

(D) Certification as to Non-Debarment. Market Square and Race Street LLC, each on behalf of itself, hereby represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. If Market Square, Race Street LLC, or any of either entity's 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.

(E) Legal Requirements. In 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, Hamilton County, and City of Cincinnati.

(F) Counterparts; Electronic Signatures. This Amendment 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 Amendment may be executed and delivered by electronic signature.

[Signature Page Follows]

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

CITY OF CINCINNATI,
an Ohio municipal corporation

By: _____
Sheryl M.M. Long, City Manager

Date: _____, 2024

MARKET SQUARE I, LLC,
an Ohio limited liability company

By: _____

Name: _____

Title: _____

Date: _____, 2024

1826 RACE STREET, LLC,
an Ohio limited liability company

By: _____

Name: _____

Title: _____

Date: _____, 2024

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit C

Affordability Requirements

The Company shall abide by the following requirements during the Affordability Period:

1. Maintenance. Throughout the Affordability Period, the Company shall maintain the Property as decent, safe and sanitary housing in good repair in compliance with the ongoing property condition standards of the Cincinnati Building Code, and any other applicable laws, as demonstrated by an on-site inspection which shall occur upon written request by the City and shall keep all dwelling units available for rent during that period. The Company shall give special attention to preventive maintenance of the Property and purchase the materials, equipment, tools, appliances, supplies and services necessary to maintain the Property in good and safe condition and repair. The Company shall receive and investigate systematically and promptly all service requests from tenants and City officials, take action as may be justified, and keep records of the same.

2. Reserved.

3. Leasing of Affordable Units to Qualifying Households. Throughout the Affordability Period, the Company shall ensure that all the completed Affordable Units at the Property are leased to households with an annual household income (as defined in 24 CFR 5.609) that is equal to or below the applicable area median income limits set forth in Section 35 of this Agreement.

4. Income Recertification.

(A) Verification Procedure. The Company shall verify an occupant's income (i) annually (including, without limitation, at the time of lease renewal or changes in income) through a statement and certification from the occupant, and (ii) at least once every 6 years during the Affordability Period using third party source documentation supplied by the occupant. On an annual basis, the Company shall verify its continued compliance with the affordability terms of this Exhibit by certifying project rents and verifying tenant eligibility by submitting to the City a *Tenant Profile Income Verification Form* for all households occupying Affordability Units. The *Tenant Profile Income Verification Form* must be signed by and certified by each tenant and indicate that the information is complete and accurate.

(B) Changes in Income and Over-income Households. In the event that a tenant's household income exceeds the applicable income limits during a tenancy, the tenant who becomes over income after initial income certification will be allowed to stay in the unit. Such change in annual income shall not prohibit an extension to the original lease term with the same occupant, so long as the occupant complied with the household income requirements at the execution of the initial lease agreement. A qualifying or low-income household that is not low-income at the time of income recertification (i.e., whose income is above 80% AMI) must pay as rent the lesser of the amount payable by the tenant under State or local law or 30% of the family's adjusted income. If a household's current annual income exceeds the eligibility limit, the unit continues to qualify as an Affordable Unit as long as the Company fills the next available unit with an eligible, qualifying household. The next available unit would be one of similar or larger size than the one occupied by the over-income tenant. The Company shall collect such compliance documentation in such form as required by DCED and which form may be updated from time to time throughout the Affordability Period. Throughout the Affordability Period, the Company shall comply with, and shall cause each tenant to comply with, all other City verification and compliance reporting requirements.

5. Terms for Tenancies; Tenant Protections.

(A) Written Rental Agreement. The Company shall rent all dwelling units pursuant to a written rental agreement approved by the City for compliance with Chapter 5321 of the Ohio Revised Code and Chapter 871 of the Cincinnati Municipal Code and shall submit its form of written rental agreement to the City on an annual basis, in accordance with its reporting requirements under this Agreement. The written rental agreement shall not contain any of the prohibited lease terms specified in Section 5321.13 of the

Ohio Revised Code. The Company shall ensure that a copy of the written rental agreement must be signed by both the tenant and the Company (or the Company's property management entity); maintained in the Company's files and submitted to the City along with the *Tenant Profile Income Verification Form*.

(B) **Limited Termination; Notice Requirements.** The Company may not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violation of the terms and conditions of the rental agreement. The Company must give the tenant written notice of the termination, specifying the grounds therefor, no less than 30 days prior to the effective date of the termination. Nothing in this paragraph shall prevent the Company from terminating the tenancy of a tenant for nonpayment of rent (if applicable), provided that inability to pay rent means that the tenant cannot pay more than 30% of the household's income toward rent, based on an income determination made by the City in the last 30 days. To terminate or refuse to renew tenancy for any household occupying an Affordable Unit, the Company must serve written notice upon the tenant at least 30 days prior to terminating the tenancy, specifying the grounds for the termination or nonrenewal.

6. Documentation. At the time of executing an initial lease agreement with a tenant of an Affordable Unit, the Company shall collect documentation of family size and household income from tenants of all of the Affordable Units in order to document compliance with the affordability requirements herein. The Company shall collect such compliance documentation in such form as required by DCED and which form may be updated from time to time. The Company is also responsible for ensuring that the lease terms for Affordable Units at all times comply with the Affordability Requirements. The Company shall provide documentation to the City demonstrating compliance with the Affordability Requirements in accordance with this Agreement.

7. Rent Limitation. The Company shall not charge rent to any Affordable Unit occupied by qualifying households that exceeds the maximum applicable rent amounts for the Affordable Units (as applicable based on the number of bedrooms in a given Affordable Units, and as those rent amounts correspond to those Affordable Unit's area median income limits).

8. Project Occupancy. The Company shall use its best efforts to ensure all Affordable Units are occupied by eligible, qualifying households on or before the commencement of the Affordability Period and submit information to the City on its efforts to fill such units for qualifying households.

9. Condominium Conversion. During the Affordability Period, the Company shall not convert any dwelling units in the Project to condominium ownership or to any form of cooperative ownership.

10. Third-Party Beneficiaries. The Company and the City acknowledge that the tenants of the Affordable Units are intended third-party beneficiaries of the Affordability Requirements, and such tenants shall have the ability, but not the obligation, to enforce the terms of the Affordability Requirements against the Company; *provided however*, nothing herein shall permit the City and the Company from amending the terms of the Agreement, including the Affordability Requirements, in their sole discretion and without consent of the tenants of Affordable Units and no City liability or obligations to tenants of Affordable Units is intended to be created by this section. The Company shall be liable for all costs and damages, including without limitation attorneys' fees, suffered or incurred by a tenant of an Affordable Unit in connection with enforcement of the Affordability Requirements.

Exhibit D

Form of Affidavit

SEE ATTACHED

Executed on the dates of acknowledgment set forth below.

MARKET SQUARE I, LLC,
an Ohio limited liability company

By: _____
Name: _____
Title: _____

1826 RACE STREET, LLC,
an Ohio limited liability company

By: _____
Name: _____
Title: _____

STATE OF OHIO,
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of Market Square I, LLC, an Ohio limited liability company, on behalf of the company.

Notary Public
My Commission Expires: _____

STATE OF OHIO,
COUNTY OF HAMILTON, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of 1826 Race Street, LLC, an Ohio limited liability company, on behalf of the company.

Notary Public
My Commission Expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:
City of Cincinnati Law Department
City Hall, Suite 214
801 Plum Street
Cincinnati, Ohio 45202

Exhibit A
to Affidavit of Facts Relating to Title
Legal Description

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Affidavit of Facts Relating to Title
Affordability Requirements

TO BE ATTACHED TO EXECUTION VERSION