

FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
(Three Oaks)

THIS FIRST AMENDMENT TO DEVELOPMENT 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 OAKLEY YARDS LAND, LLC, an Ohio limited liability company ("**Developer**").

Recitals:

A. On December 15, 2021, the City and Developer entered into that certain *Development Agreement* (the "**Agreement**"), relating to the redevelopment of approximately 30 acres of real property located at 2800 Robertson Avenue in the Oakley neighborhood of Cincinnati. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

B. Developer desires to update the Private Improvements component of the Project by reducing the number of single-family homes in the Single-Family Project from approximately 105 to 79. In the area where Developer previously anticipated constructing the additional 26 homes, Developer now desires to construct approximately 31 car condo units, as more particularly described herein.

C. Additionally, Developer desires to amend the Agreement to reflect an updated Construction Schedule and to increase maximum principal amount for the Bonds and the maximum amount of Bond proceeds netted to the Project authorized under the Agreement.

D. The City is amenable to amending the Agreement upon the terms and conditions provided herein.

NOW, THEREFORE, the parties agree as follows:

1. Amendments to Recitals B-D. Recitals B-D of the Agreement are hereby deleted and replaced in their entirety with the following:

B. Developer currently anticipates redeveloping the Project Site, as depicted on Exhibit A-1 (Site Plan) hereto, and as more particularly described on Exhibit C-1 (Description of Private Improvements) and Exhibit C-2 (Description of Public Infrastructure Improvements) hereto. The "**Private Improvements**" will consist of Developer's design and construction of (i) approximately 350 to 400 market-rate residential apartment units (the "**Multi-Family Project**"), (ii) approximately 150 to 200 units of senior housing (the "**Senior Project**"), (iii) approximately 79 single-family homes (the "**Single-Family Project**"), and (iv) approximately 31 car condo units (the "**Car Condo Project**"). The "**Public Infrastructure Improvements**" include but are not limited to Developer's demolition, environmental remediation, and design and construction of (a) public right of way, (b) public roads, (c) public pedestrian path, (d) park space, (e) stormwater management, (f) utilities, and (g) sitework, *provided that* such improvements, if financed by the Bonds (as defined below), must be eligible for reimbursement pursuant to Ohio Revised Code ("**ORC**") Section 5709.40 in order to constitute Public Infrastructure Improvements that are eligible to be financed by the Bonds (as defined below). The Public Infrastructure Improvements and the Private Improvements are collectively, the "**Project**".

C. The total estimated cost (including, without limitation, hard construction costs, soft costs, and acquisition costs) of (i)(a) the Multi-Family Project is approximately \$78,000,000, (b) the Single-Family Project is approximately \$37,800,000, (c) the Senior Project is approximately \$61,000,000, and (d) the Car Condo Project is approximately \$9,000,000, for an aggregate total estimated cost for the Private Improvements of \$185,800,000, as more particularly described on Exhibit D-1 (Preliminary Budget – Private Improvements) hereto; and (ii) the Public Infrastructure Improvements is approximately \$21,000,000, as more particularly described on Exhibit D-2 (Preliminary Budget – Public Infrastructure Improvements) hereto. Developer has represented to the City that it intends to use various sources of funds to finance the costs associated with the Project, as set forth on Exhibit E-1 (Sources of Funds – Private Improvements) and Exhibit E-2 (Sources of Funds – Public Infrastructure Improvements) hereto.

D. Developer currently anticipates that it will (i) commence construction of (a) the Public Infrastructure Improvements on or about July 1, 2021, (b) the Multi-Family Project on or about August 31, 2025, (c) the Single-Family Project on or about December 31, 2022, (d) the Senior Project on or about December 1, 2025, and (e) the Car Condo Project on or about March 1, 2025; and (ii) complete construction substantially in accordance with the Final Plans (as defined below) of (a) the Public Infrastructure Improvements no later than December 31, 2026, (b) the Multi-Family Project no later than August 31, 2027, (c) the Single-Family Project no later than December 31, 2027, (d) the Senior Project no later than June 1, 2028, and (e) the Car Condo Project no later than December 31, 2026, and that the Project will be completed substantially in accordance with the construction schedule shown on Exhibit F (Construction Schedule) hereto.

2. Amendment to Recital F. Recital F to the Agreement is hereby deleted in its entirety and replaced with the following:

F. The parties currently anticipate that the Public Infrastructure Improvements will be financed by the Port of Greater Cincinnati Development Authority (the “**Port Authority**”), Developer presently intends to finance the construction of the Public Infrastructure Improvements by entering into a separate construction agreement, cooperative agreement, service agreement(s), and other ancillary agreements with the City and/or the Port Authority pursuant to which (i) the Port Authority will issue one or more series of special obligation development revenue bonds, with no series having a term in excess of the maximum maturity allowable at law for such series, in a principal amount not to exceed \$23,600,000 (estimated to net approximately \$15,000,000 in proceeds to the Project fund) for the financing of the Public Infrastructure Improvements (the “**Senior Bonds**”), (ii) the Port will issue (which may be assigned in accordance with the aforementioned documents) subordinate bonds in a principal amount not to exceed \$7,000,000 (estimated to net approximately \$6,000,000 in proceeds to the Project fund) for the financing of the Public Infrastructure Improvements and that will be underwritten to fully amortize no later than December 31, 2045 (the “**Subordinate Bonds**”, collectively with the Senior Bonds, the “**Bonds**”), and (iii) make the net proceeds from the Senior Bonds and the Subordinate Bonds available to Developer to pay for the construction of the Public Infrastructure Improvements (as determined by the separate agreements that may be entered into by the Port Authority, the City, and Developer). For the avoidance of doubt, it is acknowledged and agreed that the aforementioned Bond proceeds estimated to be deposited in the Project fund are merely estimates and the parties anticipate that the actual amounts deposited in the Project fund will be negotiated and determined through the parties’ negotiation of the Bond documents.

3. Construction Timelines. In regard to the timelines for construction of the various components of the Project, the first two sentences of Section 2(C)(i), and the entirety of Sections 2(C)(ii), (iii), and (iv) of the Agreement are hereby deleted and replaced with the following:

(i) Public Infrastructure Improvements. Developer shall commence construction of the Public Infrastructure Improvements not later than July 1, 2021. Developer shall complete construction, substantially in accordance with the Final Plans and substantially in accordance with Exhibit F with respect to the Public Infrastructure Improvements, not later than December 31, 2026.

(ii) Multi-Family Project. Developer shall commence construction of the Multi-Family Project not later than August 31, 2025. Developer shall complete construction, substantially in accordance with the Final Plans with respect to the Multi-Family Project not later than August 31, 2027.

(iii) Senior Project. Developer shall commence construction of the Senior Project not later than December 1, 2025. Developer shall complete construction, substantially in accordance with the Final Plans with respect to the Senior Project, not later than June 1, 2028.

(iv) Single-Family Project. Developer shall commence construction, or cause the commencement of construction of the Single-Family Project not later than December 31, 2022. Developer shall use best efforts to complete or cause the completion of construction, substantially in accordance with the Final Plans with respect to the Single-Family Project not later than December 31, 2027.

4. Car Condo Project. New Section 2(C)(v), "Car Condo Project," is added immediately following existing Section 2(C)(iv), which is to read as follows:

(v) Car Condo Project. Developer shall commence construction of the Car Condo Project not later than March 1, 2025. Developer shall use best efforts to complete construction, substantially in accordance with the Final Plans with respect to the Car Condo Project, not later than December 31, 2026.

5. Environmental Condition. New Section 2(F), "Environmental Covenant," is added immediately following existing Section 2(E), which is to read as follows:

(F) Environmental Covenant. Developer shall prepare and record a restrictive covenant to limit activity and land use that is environmentally protective of conditions identified in the Phase I and Phase II Environmental Site Assessments as to the portion of the Property upon which the Car Condo Project is to be located (the "**Environmental Covenant**") no later than [_____]. The Environmental Covenant shall be prepared in a form acceptable to the City and shall be recorded in the real property records of Hamilton County, Ohio Records, all at Developer's expense.

6. Excess Project TIF Revenue. Section 3(B) is hereby deleted in its entirety and replaced with the following:

(B) Excess Project TIF Revenue. To the extent the Project TIF Revenue in any year exceeds the amount payable to the Port Authority for payment of the Bond Obligations for such year, as more particularly described in one or more separate agreements to be executed by the City, Developer, and the Port Authority, the City shall be entitled to retain and use such excess Project TIF Revenue for any lawful purpose. For the avoidance of doubt, (i) to the extent the Project TIF Revenue associated with any portion of the Project is not to be used to secure Bond Obligations associated with the applicable phase of the Bonds, for any reason, the City shall be entitled to retain and use such excess Project TIF Revenue for any lawful purpose and (ii) the Subordinate Bonds will mature no later than December 31, 2045, and following the maturity of the Subordinate Bonds, any Project TIF Revenue in excess of the Senior Bonds will be retained by the City.

For the avoidance of doubt, no Project TIF Revenue will be used to service the Subordinate Bonds after December 31, 2045.

7. Exhibits to Agreement. Exhibit A-1 (Site Plan), Exhibit C-1 (Description of Private Improvements), Exhibit D-1 (Preliminary Budget – Private Improvements), Exhibit D-2 (Preliminary Budget – Public Infrastructure Improvements), Exhibit E-1 (Sources of Funds – Private Improvements), Exhibit E-2 (Sources of Funds – Public Infrastructure Improvements), and Exhibit F (Construction Schedule) are hereby deleted and replaced with Exhibit A-1-1 (Amended Site Plan), Exhibit C-1-1 (Amended Description of Private Improvements), Exhibit D-1-1 (Amended Preliminary Budget – Private Improvements), Exhibit D-2-1 (Amended Preliminary Budget – Public Infrastructure Improvements), Exhibit E-1-1 (Amended Sources of Funds – Private Improvements), Exhibit E-2-1 (Amended Sources of Funds – Public Infrastructure Improvements), and Exhibit F-1 (Amended Construction Schedule) hereto, respectively, which are hereby incorporated into and made a part of the Agreement and which, on and after the Effective Date hereof, shall be deemed to be Exhibit A-1, Exhibit A-2, Exhibit C-1, Exhibit D-1, Exhibit D-2, Exhibit E-1, Exhibit E-2, and Exhibit F, respectively, for all purposes of the Agreement.

8. Representations and Warranties. Developer hereby represents and warrants to the City that all representations and warranties made by Developer in the Agreement continue to be true and correct as of the Effective Date of this Amendment.

9. Release. In consideration of the City's execution of this Amendment, Developer hereby waives any and all defaults or failures to observe or perform any of the City's obligations under the Agreement or any other document relating to the Project, 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 hereof.

10. 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.

11. 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.

[SIGNATURES ON FOLLOWING PAGE]

This Amendment is executed by the parties on the dates indicated below, effective as of the latest of such dates (the "**Effective Date**").

CITY OF CINCINNATI

OAKLEY YARDS LAND, LLC

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

By: _____

Date: _____, 2024

Printed Name: _____

Title: _____

Date: _____, 2024

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A-1-1
to First Amendment to Development Agreement
(Three Oaks)

Amended Site Plan

TO BE ATTACHED

Exhibit C-1-1
to First Amendment to Development Agreement
(Three Oaks)

Amended Description of Private Improvements

Developer will develop the approximately 30.86-acre site located at 2800 Robertson Ave in the Oakley neighborhood, which at full buildout shall include approximately 79 single-family homes, 31 for-sale car condos, 393 multi-family and townhome units, and 150-200 senior living units along with a public park, bike path, and other amenities. The Private Improvements will be developed in phases following the completion of Public Infrastructure Improvements.

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

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

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

- Approximately 79 single-family detached homes and attached townhome product.
- Alleys will be constructed to access home garages from the rear.
- Amenity spaces throughout as shown on Exhibit A-2.

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

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

Car Condo Project: Private Improvements will consist of Developer's design and construction of:

- Approximately 5 buildings consisting of approximately 31 car condo units and associated landscaping.
- A private road with gated access to the car condo units.

Exhibit D-1-1
to First Amendment to Development Agreement
(Three Oaks)

Amended Preliminary Budget – Private Improvements

Land Acquisition	\$12,000,000
Multi-Family Project	
Hard Construction Cost Estimate	\$68,000,000
Soft Cost Estimate	\$9,350,000
Contingency	\$650,000
Subtotal Multi-Family Project	<hr/> \$78,000,000
Single-Family Project	
Hard Construction Cost Estimate - Lots	\$2,500,000
Home Construction Hard Cost Estimate	\$32,700,000
Soft Cost Estimate	\$2,450,000
Contingency	\$150,000
Subtotal Single-Family Project	<hr/> \$37,800,000
Senior Project	
Hard Construction Cost Estimate	\$50,000,000
Soft Cost Estimate	\$10,500,000
Contingency	\$500,000
Subtotal Senior Project	<hr/> \$61,000,000
Car Condo Project	
Hard Construction Cost Estimate	\$7,800,000
Soft Cost and Contingency Estimate	\$1,200,000
Subtotal Car Condo Project	<hr/> \$9,000,000
Total Private Improvements Estimate	\$185,800,000

Exhibit D-2-1
to First Amendment to Development Agreement
(Three Oaks)

Amended Preliminary Budget – Public Infrastructure Improvements

Land for Public Right of Way	\$3,500,000
Building/Site Demo and Environmental Remediation	\$3,400,000
Mass Excavation/Fill	\$2,800,000
Dedicated Public Roadways, Walks, and Curbs	\$1,860,000
Utilities	\$5,100,000
Landscape/Hardscape	\$990,000
Public Park	\$200,000
Estimated Soft Costs	\$1,700,000
Developer Fee	\$850,000
Project Contingency	\$600,000
Total Public Improvements Estimate*	\$21,000,000

*It is anticipated that the total costs listed herein are the uses of the net proceeds of the Bonds. It is understood that the net proceeds of the Bonds may increase or decrease from the estimated amount. The Director of DCED, at her sole discretion, may permit, via written approval, adjustments to the budget line items at the request of Developer should the net proceeds of the Bonds differ from the estimated amount.

Exhibit E-1-1
to First Amendment to Development Agreement
(Three Oaks)

Amended Sources of Funds – Private Improvements

Private Debt - Multi-Family Project & Senior Project	\$88,200,000
Private Debt – Single-Family Project	\$32,700,000
Proceeds of Sales of Lots in Single-Family Project	\$11,850,000
Proceeds of Sales of Units in Car Condo Project	\$10,850,000
Developer Equity	\$42,200,000
Total Sources – Private Improvements	<hr/> \$185,800,000

Exhibit E-2-1
to First Amendment to Development Agreement
(Three Oaks)

Amended Sources of Funds – Public Infrastructure Improvements

Estimated Proceeds from Senior Bonds	\$15,000,000
Estimated Proceeds from Subordinate Bonds	<u>\$ 6,000,000</u>
	\$21,000,000

Exhibit F-1
to First Amendment to Development Agreement
(Three Oaks)

Amended Construction Schedule

Break Ground on Mass Excavation, Public Utility and Roadway Construction.....	7/1/2021
Closings on sale of initial single-family lots / break ground on home construction.....	12/31/2022
Single family project infrastructure substantially complete.....	12/1/2023
Closing on car condo portion of project / break ground.....	3/1/2025
Closing on multifamily portion of project / break ground.....	8/31/2025
Car Condo project substantially complete.....	12/31/2026
Closing on Senior Living Portion of the project / break ground.....	12/01/2025
Remaining / overall project infrastructure substantially complete.....	12/31/2026
Multifamily project substantially complete.....	8/31/2027
Senior Living project substantially complete.....	6/1/2028
Single Family buildout substantially complete.....	12/31/2027