

Contract No: _____

DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI,
an Ohio municipal corporation

and

OTR PROJECT PARTNERS, LLC,
an Ohio limited liability company

Project Name: Liberty and Elm
(1617 Elm Street and 1621 Logan Street, Cincinnati, Ohio)

Dated: _____, 2021

DEVELOPMENT AGREEMENT
(Liberty and Elm)

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into effective as of the Effective Date (as defined on the signature page hereof) between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **OTR PROJECT PARTNERS, LLC**, an Ohio limited liability company, 14 West 15th Street, Cincinnati, Ohio 45202 (“**Developer**”), which is an affiliate of FG OTR 1, LLC, an Ohio limited liability company (“**FG**”), and BC OTR Cincinnati, LLC, an Indiana limited liability company (“**BC**”). **W LIBERTY & ELM, LLC**, an Ohio limited liability company (“**Prior Developer**”), is a party to this Agreement for the exclusive purpose of acknowledging and agreeing to the termination of the PSDA (as defined below) and Section 3(K).

Recitals:

A. Developer is in the process of acquiring 1617 Elm Street and 1621 Logan Street, Cincinnati, Ohio 45202, which currently includes a vacant lot, abandoned right-of-way, and an existing recreational building, as more particularly described in Exhibit A-1 (*Site Plan; Legal Description; Parcel List*) hereto (the “**Property**”).

B. The City and Prior Developer are parties to that certain *Property Sale and Development Agreement* dated March 12, 2018 (the “**PSDA**”).

C. The portion of the Property consisting of former public rights-of-way, known as Freeport Alley, between Logan Street and Elm Street, and a portion of Campbell Street, between Green Street and Freeport Alley, near the northwest corner of W. Liberty Street and Elm Street in Over-the-Rhine, as depicted on Exhibit A-2 (*Sale Property*) hereto (the “**Sale Property**”), was previously owned by the City and under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”) and is the continued subject of certain repurchase rights, as more fully described herein.

D. Developer intends to demolish the existing improvements on the Property and to build approximately 278 residential rental units, approximately 10,000 square feet of commercial space, structured parking with about 220 parking spaces, the Public Improvements (as defined below) that include restoring Freeport Alley for pedestrian and bicycle use, and construct other related improvements at a total estimated project cost of \$77,000,000, all as more particularly described on Exhibit B (*Scope of Work, Budget and Source of Funds*) hereto (collectively, the “**Project**”).

E. The City’s Real Estate Services Division previously determined, by professional appraisal, that the approximate fair market value of the Sale Property was, at the time of its sale to the Prior Developer, \$35,300; however, the City is agreeable to using up to \$29,736.72 (such amount being the purchase price less the City’s closing costs) to reimburse Developer for costs incurred by Developer in constructing public improvements within the adjacent public rights-of-way in connection with the Project (the “**Public Improvements**”).

F. The Project is expected to be substantially completed by December 1, 2023 (the “**Completion Deadline**”). Developer has estimated that the Project will result in approximately 200 full-time temporary construction jobs with a total payroll of \$10,065,000, together with approximately 4 full-time permanent jobs upon completion with an estimated annual payroll of approximately \$300,000.

G. In furtherance of the City’s urban redevelopment goals, the City intends to provide an incentive to facilitate the creation of housing units and jobs within the City limits. Namely, the City intends to exempt improvements to the Property from real estate taxation under Section 5709.41 of the Ohio Revised Code for 30 years by ordinance (the “**TIF Exemption**” and the “**TIF Ordinance**”, respectively), whereby (a) Developer will pay (or cause to be paid) statutory service payments (“**Service Payments**”) to the Hamilton County Treasurer, pursuant to a service agreement to be entered into by and between the City and Developer following the Effective Date, which shall be substantially in the form of Exhibit C (*Form of Service Agreement*) hereto (the “**Service Agreement**”), in the same manner and amount as real property taxes on the Property would be paid had the project-based TIF Exemption not been established, {00327759-3}

and (b) the Service Payments, less applicable Hamilton County Auditor fees, will be distributed by the Hamilton County Treasurer to the City and placed in Fund No. 763, Urban Redevelopment Tax Increment Equivalent Fund II, established by Cincinnati City Council Ord. No. 217-2015.

H. Developer anticipates that future development, improvements, amenities and organizations will contribute to the quality and vitality of Over-the-Rhine, 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 Over-the-Rhine. Although this feedback effect will promote the revitalization and redevelopment of the City, it could also impact the affordability of property in the area. Developer acknowledges that there is a critical need for funding within the City for the preservation and development of quality affordable housing. Therefore, with the intention of preserving developing, and improving the availability of quality, reliable affordable housing on a City-wide basis, on or before the on the date of closing for the construction financing for the Project (the "**Financial Closing Date**"), Developer will contribute \$750,000 (the "**Affordable Housing Contribution**") to a City-designated third-party organization (the "**Affordable Housing Organization**"), which funds the Affordable Housing Organization will be obligated by Developer to use the Affordable Housing Contribution to develop and preserve affordable housing in the City.

I. City Council passed Motion No. 201401368 on November 19, 2014 and Motion No. 201501592 on December 16, 2015 (the "**VTICA Motions**"), which VTICA Motions (i) direct the Department of Community and Economic Development ("**DCED**") to treat contributions by developers in the vicinity of the streetcar project to streetcar operations ("**VTICA**") to be a major factor in its analysis of the appropriateness of providing tax incentives to the developers' projects, and (ii) establish that a contribution of at least 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement is the threshold for whether such a contribution is to be considered by DCED. Due to financial constraints of the Project, for tax years 11-30 of the TIF Exemption, Developer is willing to make a VTICA contribution equal to the greater of \$90,000 or 7% of the Service Payments (as defined below) for the purpose of funding the maintenance and operations of the streetcar given the value that the streetcar provides to the Project (collectively, the "**VTICA Contributions**"). DCED nonetheless believes that, on balance, the Project merits the assistance described in this Agreement because of the aggregate value of the VTICA Contributions, the scale and significance of the investment in the Property and the transformative nature of the Project, and the impact that a continuous 15% contribution would have on the Project's feasibility. To facilitate the VTICA Contributions in as convenient a manner as possible, the City will withhold the VTICA Contributions from the Service Payments and to direct them appropriately in accordance with this Agreement.

J. Prior to any rebate of Service Payments to Developer as described herein, (i) a portion of the applicable Service Payments will be retained by the Hamilton County, Ohio Auditor as a fee, (ii) 33% of the applicable Service Payment will be paid to the Board of Education of the Cincinnati City School District (the "**School Board**") to satisfy the City's obligations with respect to the Project under that certain Tax Incentive Agreement by and between the City and the School Board effective as of April 28, 2020, as the same may be hereafter amended, modified, and restated (the "**School Board Payments**"), (iii) the City will retain the fees described in Section 11(B) of this Agreement, and (iv) the City will retain the VTICA Contribution, if applicable. The proceeds of any Service Payment actually received by the City with respect to the Property, net of the payments described in clauses (i) through (iv), are referred to in this Agreement as the "**Rebate Payments**". Subject to the terms and conditions of this Agreement, during years 1 through 30 of the TIF Exemption, the City will provide the Rebate Payments to Developer.

K. In order to create a project-based TIF Exemption for the Project under Section 5709.41 of the Ohio Revised Code, the City must have held fee title to the Property prior to the enactment of the TIF Ordinance. Accordingly, Developer will convey fee title to the Property to the City for \$1.00 at Closing (as defined below), and the City will immediately re-convey the Property to Developer or its Affiliate (as defined below) thereafter for \$1.00, in each case on, and subject to, the terms of this Agreement.

L. The City has determined that re-conveying the Property to Developer or Developer's Affiliate for \$1.00 is appropriate because the City will receive the Property for the same amount, and the conveyance of the Property back to Developer or its Affiliate is necessary to facilitate the Project.

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M. The City has determined that eliminating competitive bidding in connection with the re-conveyance of the Property to Developer or its Affiliate is appropriate because Developer's willingness to initially convey the Property to the City is contingent upon the City's agreement to promptly re-convey the Property to Developer or its Affiliate and to no other party.

N. The Property is currently included in the tax increment financing ("TIF") district known as District 3 – OTR West District Incentive District (the "OTR West TIF District"). The City will "layer" the exemption provided pursuant to the TIF Ordinance over the OTR West TIF District, as it does not intend to remove the Property from the OTR West TIF District.

O. As used herein, the term "Project Documents" means, collectively, this Agreement, the Service Agreement, the Completion Guaranty (as defined below), the Indemnity Agreement (as defined below), and any and all other agreements pertaining to the Project entered into by the City, on the one hand, and Developer, on the other hand, or any instruments or other documents pertaining to the Project made by the City in favor of Developer or by Developer in favor of the City.

P. 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.

Q. Section 16 of Article VIII of the Ohio Constitution provides that, to enhance the availability of adequate housing in the state and to improve the economic and general welfare of the people of the state, it is in the public interest and a proper public purpose for the state or its political subdivisions, directly or through a public authority, agency, or instrumentality, to provide grants, loans or other financial assistance for housing in the state, for individuals and families, by the acquisition, financing, construction, leasing, rehabilitation, remodeling, improvement, or equipping of publicly- or privately-owned housing.

R. The City, upon recommendation of DCED, believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements and for this reason the City desires to facilitate the Project by providing the Rebate Payments as described herein and in the Service Agreement.

S. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the re-conveyance of the Property to Developer in connection with the Project at its meeting on October 6, 2020.

T. The execution of this Agreement and the other Project Documents, as applicable, was authorized by Cincinnati City Council by Ordinance No. [____], passed by Cincinnati City Council on [____]. Notwithstanding anything to the contrary in this Agreement, the parties' obligations hereunder are conditioned upon the passage of the TIF Ordinance.

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

1. DUE DILIGENCE INVESTIGATIONS.

(A) Developer's Delivery of Due Diligence Materials to the City. Following the Effective Date and at such time as such documents become available, Developer, at its sole expense, shall obtain and deliver (or cause to be obtained and delivered) to the City the following items:

- (i) *Title:* A copy of Developer's Owner's Policy of Title Insurance or other evidence satisfactory to the City showing that Developer owns good and marketable fee simple title to the Property;

- (ii) *Survey*: An ALTA survey of the Property showing all easements and other matters of record that can be shown on a survey;
- (iii) *Site Plan*: A detailed site plan showing the proposed location of the Project and approved by DOTE and DCED;
- (iv) *Appraisal*: A projected “as built” appraisal of the Project (but only if such an appraisal is required by Developer’s lender);
- (v) *Construction Schedules*: A detailed construction timeline showing significant construction milestones;
- (vi) *Budget*: A detailed and updated development budget for the Project;
- (vii) *Guaranty*: Evidence satisfactory to the City that the Guarantor (as defined below) has sufficient assets and liquidity in the event that the City seeks payment under the Completion Guaranty or the Indemnity Agreement, in accordance with the terms thereof; and
- (viii) *Environmental*: A copy of whatever environmental reports Developer and Developer may obtain in connection with the Project, including, at a minimum, in addition to the Phase I and Phase II environmental site assessments Developer has provided, such other evidence and documentation as is deemed necessary or desirable by the City’s Office of Environment and Sustainability to confirm that environmental conditions on the site are adequate for the City to take title, and such agreements or other documentation as may be necessary to provide the City with the legal right to rely on any applicable environmental reports; and
- (ix) *Financing*: Evidence satisfactory to the City that Developer has or has obtained sufficient financial resources in order to commence and complete the Project.

(B) Contingency for City’s Satisfaction with Due Diligence Investigations. All reports and the like obtained by Developer from third parties and delivered (or caused to be delivered) to the City shall be recent (*i.e.*, prepared or updated, as the case may be, within three (3) months preceding the date that the item is delivered to the City or such longer period of time as the City may, in its sole discretion, deem reasonable) and shall be prepared by properly licensed and qualified companies or individuals acceptable to the City. In addition to the above due diligence items, the parties may conduct whatever additional investigations concerning the Project as they deem necessary, including without limitation investigations into the feasibility and likelihood of Developer obtaining all building, zoning and other approvals from the Department of Buildings and Inspections, the City Planning Commission, and any other applicable City departments, agencies or boards. If, during or at the conclusion of the due diligence investigations, any party reasonably determines that any part of the Project is not feasible, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other party written notice thereof, whereupon this Agreement shall terminate and neither party shall thereafter have any rights or obligations hereunder except as may expressly survive termination. Notwithstanding Section 7 hereof, unless otherwise directed by the DCED Director, Developer shall deliver (or cause to be delivered) all due diligence materials to be provided to the City under this Agreement to the DCED Director (for review by DCED and other City departments as deemed necessary or appropriate by DCED) and shall generally coordinate all aspects of the Project (as they relate to the City) through DCED. Upon Closing, the termination rights of the parties under this Section 1(B) shall automatically terminate and thereafter shall be null and void.

2. CLOSING.

(A) Closing Date. The closing of the transactions described in this Section 2 (the “**Closing**”) is anticipated to take place on the date that is approximately two months following the Effective Date, or such other date as the parties may agree upon (the “**Closing Date**”); *provided, however* that the Closing shall occur prior to the passage of the TIF Ordinance. It is the intention of the parties that all of the transactions contemplated in this Section 2 will occur on the same date in as immediate of a sequence as is possible. The occurrence of the Closing is subject to (i) the parties’ satisfaction with the various due diligence matters described in Section 1 above, and (ii) the prior execution and delivery to the City of the Service Agreement and each of the other Project Documents.

(B) Initial Conveyance. On the Closing Date, Developer shall transfer title to the Property to the City for \$1.00 (the “**Initial Conveyance**”) by Quitclaim Deed in substantially the form of Exhibit D-1 (*Form of Quitclaim Deed - Initial Conveyance*) hereto. Developer shall pay all customary closing costs relating to the Initial Conveyance (e.g., County transfer tax and County recording fees). The City agrees to neither make, nor permit to be made, any material changes to the condition of the Property or the title thereto during the period in which it owns the Property, which the parties intend to be for as short a period as practicable. During the period in which the City owns the Property, Developer, and its employees and agents, are permitted to enter upon the Property for the purpose of conducting activities associated with the Project at no cost to the City, provided that such entry shall be at the sole risk of Developer, its employees and agents, and provided, further, for the avoidance of doubt, that the activities described in this sentence are subject to the indemnification provision in Sections 3(H) and 5(C) of this Agreement.

(C) City Conveyance. Immediately following the Initial Conveyance, the City shall re-convey the Property to Developer or its Affiliate for \$1.00 (the “**City Conveyance**”), by a Quitclaim Deed in substantially the form of Exhibit D-2 (*Form of Quitclaim Deed – City Conveyance*) hereto. Developer shall pay all customary closing costs relating to the City Conveyance (e.g., County transfer tax and County recording fees). The deed effecting the Initial Conveyance shall be recorded prior to the deed effecting the City Conveyance.

(D) Miscellaneous Closing Provisions. 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 related to the Property to the City. There shall be no proration of real estate taxes and assessments at Closing, and it is understood that the City shall in no way be responsible for the payment of any real estate taxes, service payments in lieu of taxes and assessments due or thereafter becoming due. At Closing, the City and Developer shall execute a closing statement, County exempt transfer forms and any and all other customary closing documents that may be deemed necessary for the Closing by the City.

3. COMPLETION OF THE PROJECT.

(A) Preparation of Plans and Specifications. Promptly following the Effective Date, Developer shall prepare plans and specifications for the Project and shall submit the same to DCED for review and approval; *provided* that DCED may only withhold approval if such plans and specifications (i) materially reduce or diminish the size, scope, quality, or site plan of the Project, (ii) could reasonably be expected to materially reduce the projected hard construction cost of the Project, or (iii) are otherwise inconsistent with zoning laws or any planned development approved by City Council with respect to the Project or are materially inconsistent with Exhibit B, in each case as determined in DCED’s judgment, exercised in good faith. The approved plans and specifications for the Project (including any and all changes thereto, subject to the City’s review and approval solely on the criteria provided in the immediately preceding sentence) are referred to herein as the “**Final Plans**” with respect to the Project.

(B) Construction Bids. Following Closing, Developer shall obtain construction bids for the Project. Upon Developer’s selection of the bids, Developer shall submit to the City an updated construction budget for the Project.

(C) Completion and Commencement of Construction. Developer shall (i)(a) apply for and receive the required building permits from the City’s Department of Buildings and Inspections for construction of the Project and (b) Developer shall commence construction of the Project in accordance with the Final Plans no later than June 30, 2021 (the “**Commencement Deadline**”) and (ii) complete construction of the Project in substantial accordance with the Final Plans, as determined by the City in good faith, no later the Completion Deadline. The foregoing notwithstanding, the City may, upon Developer’s written request and at the City’s sole discretion, permit the Commencement Deadline and the Completion Deadline to each be extended twice in six (6) month increments.

(D) Completion Guaranty. The City acknowledges and agrees that Developer is undertaking the Project during the COVID-19 global pandemic and for that sole reason, the City agrees to delay the delivery of the Completion Guaranty from the date of Closing to the Financial Closing Date. On or before {00327759-3}

the Financial Closing Date, Developer shall cause one or more affiliates of Developer acceptable to the City ("**Guarantor**"), to execute a *Completion Guaranty* which shall be in substantially the form of Exhibit E (Form of Completion Guaranty) hereto (a "**Completion Guaranty**").

(E) Inspection of Work. During construction of the Project, the City, its employees and agents shall have the right at all reasonable times, and upon reasonable notice, to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement.

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

(G) Barricade Fees Payable to DOTE. Developer acknowledges that, if applicable, (i) it will be required to obtain a barricade permit and pay barricade fees to DOTE for the closure of any sidewalks and curb lanes of the adjacent streets if and when demolition or construction necessitates closing the adjoining streets or portions thereof, and (ii) with many entities competing for space on City streets, it is important that construction activities be limited to as little space and the shortest duration as possible and that all work be scheduled and performed to cause the least interruption to vehicular travel, bicyclists, pedestrians and businesses; therefore, DOTE shall have the right to evaluate Developer's need for a barricade throughout construction and, if at any time after consultation with Developer DOTE determines that a barricade is not needed, DOTE shall have the right to withdraw the permit.

(H) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Property that exists at or prior to the time of the City's execution of this Agreement (herein, a "pre-existing environmental condition"), and regardless of whether or not such pre-existing environmental condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such pre-existing environmental condition in accordance with applicable laws and regulations, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including without limitation reasonable attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the City as a result of or arising from any such pre-existing environmental condition. Developer's remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

(I) Parking Requirements. If Developer holds out parking to the general public in the parking garage portion of the Project, then Developer agrees to incorporate the following technology within such parking garage at Developer's sole cost and expense: (i) real-time data tracking regarding total parking space capacity, available to the City for publication online and compatible with other City garage inventory tracking systems, and which may include electronic signage at one or more entrances, as deemed appropriate by DCED, indicating available parking and (ii) a ticketing and payment system compatible with leading enterprise software providers including specifications such as public application program interface, open data, and open source code. Developer agrees to cooperate in good faith with DCED in incorporating other parking technology in the parking garage from time to time.

(J) Termination of Existing Property Sale and Development Agreement; Maintenance of Sale Property. In order to provide for the orderly development of the Property, the PSDA is hereby terminated as of the Effective Date. Developer, as part of its obligations under this Agreement, agrees to perform the following obligations that were formerly the obligations of the Prior Developer under the PSDA:

(i) *Maintenance of Sale Property Prior to Construction:* Prior to commencement of construction of the Project, Developer, at no expense to the City, shall maintain the Sale Property in a safe and presentable condition, including keeping the site reasonably free of debris and unsightly materials;

(ii) *Salvage:* During construction, Developer shall salvage all bricks and granite curb. Developer shall re-use the material in the right-of-way. Developer shall deliver all excess materials to the City's Mill Creek yard as directed by DOTE;

(iii) *Design:* Developer shall obtain DOTE's final approval of its proposed site plan for the Public Improvements. Developer shall work with DOTE on streetscape around the site (trees, lights, meters, conduit, signs, scoring pattern, etc.). Developer shall close off Campbell Street, at Green Street, with a curb and sidewalk. Developer acknowledges that if sidewalks are replaced, DOTE shall require granite curbs. Developer acknowledges that its improvements to Freeport Alley may be required to comply with the Americans With Disabilities Act (ADA);

(iv) *Utility Poles:* Developer shall take all steps necessary, and shall coordinate with DOTE and Duke to discontinue Duke's charges to the City for electricity for the existing light on the wood pole; and

(v) *Street Opening Permit:* Developer's licensed street contractor shall obtain a DOTE street opening permit before working in the right-of-way. All Public Improvements must be built to City standards, policies and guidelines. Application for permits may be made at City Hall, Room 425. Two sets of plan drawings must accompany the permit application.

(K) Failure to Commence Construction – City's Right to Repurchase. If Developer fails to commence on-site construction by the Commencement Deadline, the City shall have the right (exercisable by written notice) to require Developer (or Prior Developer, if the Developer has not acquired the Property) to re-convey the Sale Property to the City. If the City elects to re-purchase the Sale Property, the reconveyance shall take place on the date specified in the City's notice (not to exceed ninety (90) days after the date of the City's notice). On the date of reconveyance: (i) the City shall refund the net sales proceeds to Developer (less the amount of any loan or grant provided by the City to Developer under this Agreement, and less the amount retained by the City to pay for services rendered by the City's Real Estate Services Division in connection with the PSDA and other costs incurred by the City in connection with the sale) (or, if the Developer has not acquired the Property from the Prior Developer, then to the Prior Developer); (ii) Developer (or Prior Developer, as applicable) shall reconvey the Sale Property (including any and all improvements) to the City 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 or Prior Developer to the Sale Property); (iii) Developer (or Prior Developer, as applicable) shall convey marketable title to the Sale Property to the City by limited warranty deed, free and clear of all liens and encumbrances; (iv) Developer shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds for the re-conveyance; and (v) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of this paragraph are reflected in the original deed of conveyance of the Sale Property from the City to the Prior Developer. Prior Developer and Developer each acknowledges the foregoing, and that the repurchase right continues to affect the Sale Property as a requirement of this Agreement and regardless of the termination of the PSDA. On or before the Effective Date, the Prior Developer will execute and record against the Sale Property the acknowledgment set forth in Exhibit G (Prior Developer's Acknowledgment of Repurchase Right) hereto. Upon acquisition of the Property, the Developer will execute and record against the Sale Property the acknowledgment set forth in Exhibit H (Developer's Acknowledgment of Repurchase Right) hereto.

4. CITY ASSISTANCE.

(A) Rebate Payments. Subject to Developer's compliance with the terms and conditions of this Agreement and all other Project Documents, the City shall apply the proceeds of the Service Payments {00327759-3}

other than the Rebate Payments as described in Recital H of this Agreement, and shall distribute 100% of the Rebate Payments with respect to years 1 through 30 of the TIF Exemption to Developer, and (ii) any Service Payments retained by the City may be used by the City for such purposes as are authorized in the TIF Ordinance and this Agreement. Developer acknowledges and agrees that (x) Developer will not receive any Rebate Payments other than with respect to tax years falling within the TIF Exemption that are actually made in accordance with the Service Agreement and are actually received by the City, and (y) notwithstanding anything to the contrary in this Agreement or any other Project Document, (1) Developer shall not have any right or standing to dispute or contest the City's use of the Service Payments it retains in accordance with this Agreement and the TIF Ordinance, and Developer hereby expressly waives any such right or standing and (2) as it respects Developer, any description of what the City may or may not do with the Service Payments, including any description in this Agreement and the TIF Ordinance, is for informational purposes only and is not enforceable by Developer at law or in equity, whether as a taxpayer, as a party to this Agreement, or otherwise. The City shall endeavor to make each applicable Rebate Payment as soon as is practicable upon receipt of the proceeds of each Service Payment (which the City acknowledges will generally occur not later than 45 business days following its receipt of the settlement pertaining to such Service Payment from the Hamilton County, Ohio Treasurer).

(B) City Funding for Public Improvements. The parties acknowledge that, as part of the Project, Developer shall be constructing Public Improvements within the adjacent public rights-of-way, all of which must be in accordance with DOTE requirements. Provided Developer satisfies the conditions for disbursement set forth in Exhibit F (Disbursement of Funds) hereto, the City intends to make a portion of the net sales proceeds received by the City from the closing of the Sale Property (i.e., the gross sales proceeds, less amounts retained by the City to pay for services rendered by the City's Real Estate Services Division in connection with the PSDA and other costs incurred by the City in connection with the sale) available to Developer to help pay for costs incurred by Developer in constructing the Public Improvements, such amount being \$29,736.72 as of the Effective Date.

(C) No Other City Assistance. Except for the City's agreement to provide the Rebate Payments, as described in this Agreement and the Service Agreement (as applicable), the City shall not be responsible for any costs associated with the Project.

5. INSURANCE; INDEMNITY.

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

(B) Waiver of Subrogation. Developer hereby waives all claims and rights of recovery, and on behalf of Developer's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents,

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contractors or subcontractors; it being the agreement of the parties that Developer shall at all times protect itself against such loss or damage by maintaining adequate insurance. Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, (i) 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 Claims (as defined below) suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Developer and its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at its request in connection with the Project, and (ii) Developer shall defend, indemnify and hold the Indemnified Parties harmless from and against any and all Claims as a result of or arising from the City’s involvement in the Initial Conveyance and the City Conveyance, including the City’s ownership of the Property during the period between the Initial Conveyance and the City Conveyance. Further, Developer shall cause the Guarantor to execute an Indemnity Agreement in a form acceptable to the City prior to Closing (the “**Indemnity Agreement**”) whereby the Guarantor agrees to defend, indemnify and hold the Indemnified Parties harmless with respect to Claims described in the preceding clause (ii). The obligations of Developer under this paragraph shall survive termination of the Agreement with respect to Claims suffered, incurred, asserted or arising prior to the date of termination. As used herein, “**Claims**” means, collectively, any and all actions, suits, claims, losses, costs (including without limitation attorneys’ fees), demands, judgments, liability and damages.

(D) Casualty; Eminent Domain - Public Improvements. If the improvements in the Sale Property are damaged or destroyed by fire or other casualty during construction, or if any portion of the Sale Property is taken by exercise of eminent domain (federal, state or local), Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Sale Property was in immediately prior to such occurrence. To the extent the City’s participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected Sale Property, the City shall not be required to make up the deficiency. Developer shall handle all construction of the Public Improvements in accordance with the applicable requirements set forth herein, including without limitation obtaining the City’s approval of the plans and specifications if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations with respect to the Sale Property, financial or otherwise, under this Agreement during any period in which the Sale Property is being repaired or restored, except that the Completion Date with respect to the Public Improvements may be extended if necessary. Unless otherwise required by DOTE in connection with DOTE’s review and approval of Developer’s plans and specifications pertaining to the Public Improvements under this Agreement, Developer shall have no on-going obligation to maintain the Public Improvements following completion of construction.

6. DEFAULT; REMEDIES.

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

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

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

(b) the filing of any bankruptcy or insolvency proceedings by or against Developer or Guarantor (during the term of the Guaranty), the appointment of a receiver (temporary or permanent) for any such entity or person, the attachment of, levy upon, or seizure by legal process of any property of any such entity or person, or the insolvency of any such entity or person, unless such

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appointment, attachment, levy, seizure or insolvency is cured, dismissed or otherwise resolved to the City's satisfaction within sixty (60) days following the date thereof; or

(ii) The occurrence of a Specified Default (as defined below), or a failure of Developer to perform or observe any obligation, duty, or responsibility under this Agreement or any other Project Document (provided that a failure of the Guarantor to perform under the Completion Guaranty or the Indemnity Agreement shall be deemed a failure of Developer to perform under this Agreement), and failure by the defaulting party to correct such default within thirty (30) days after the receipt by Developer of written notice thereof from the City (the "**Cure Period**"), other than a Payment Default (as described below), in which case there shall be a Cure Period of 5 business days after the defaulting party's receipt of written notice thereof from the City; *provided, however*, that if the nature of the default (other than a Payment 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 the defaulting party commences to cure the default within such Cure Period and thereafter diligently completes such cure within sixty (60) days after receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City in good faith, an event of default shall be deemed to have occurred if the defaulting party fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency. As used in this section, "**Specified Default**" means the occurrence of any of the following:

- (a) Payment Default. Any Service Payment is not made when due under the Service Agreement, subject to the 5-day Cure Period described above (a "**Payment Default**"). Developer acknowledges that time is of the essence with respect to the making of each Service Payment and that delays in the making of a Service Payment may result in a delay in the City's ability to make Rebate Payments.
- (b) Development Default. Developer (1) fails to comply with Section 3 of this Agreement or (2) abandons the Project, including without limitation the Project is vacated, demolished, and/or abandoned.
- (c) Misrepresentation. Any representation, warranty or certification of Developer made in connection with this Agreement, any other Project Document, or the Affordable Housing Contribution, shall prove to have been false or materially misleading when made.

(B) Remedies. Upon the occurrence of an event of default under this Agreement which is not cured or corrected within any applicable Cure Period, the City shall be entitled to (i) terminate this Agreement with respect to a defaulting party by giving the defaulting party written notice thereof, (ii) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the sole expense of the defaulting party, (iii) withhold Rebate Payments until such default or defaults are cured (it being acknowledged and agreed by Developer that any Rebate Payments withheld by the City pursuant to this clause for a period longer than 12 months shall be deemed forfeit by Developer and the City shall be entitled to retain such Service Payments with respect to which Developer has no right or interest), and (iv) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including without limitation pursuing an action for specific performance. The defaulting party shall be liable for all costs and damages, including without limitation attorneys' fees, suffered or incurred by the City as a result of a default or event of default under this Agreement or the City's termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty, or to pursue any remedy, under this Agreement or any other Project Document shall not constitute a waiver of the breach of such covenant or of such remedy.

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 Manager
City of Cincinnati
801 Plum Street
Cincinnati, OH 45202

To Developer:
OTR Project Partners, LLC
14 West 15th Street
Cincinnati, OH 45202

With a copy to:

Director, Dept. of Community and
Economic Development
City of Cincinnati
805 Central Avenue, Suite 700
Cincinnati, OH 45202

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

8. REPRESENTATIONS, WARRANTIES, AND COVENANTS. Developer makes the following representations, warranties and covenants to the City as follows:

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

(B) 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.

(C) 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 in any manner relevant to the transactions contemplated by this Agreement or which may in any way affect Developer's ability to perform its obligations under this Agreement or the other Project Documents.

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

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

(F) 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, or, if any such documentation contained such a misleading or untrue omission or statement, further documentation correcting such omissions or statements was subsequently provided to the City prior to Developer's execution of this Agreement.

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

(H) Developer hereby represents and warrants to the City that it will make the Affordable Housing Contribution to the Affordable Housing Organization on or before the Financial Closing Date.

9. REPORTING REQUIREMENTS.

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

(B) City's Right to Inspect and Audit. During construction of the Project and thereafter until the Retention Termination Date, Developer shall permit the City and its designees and auditors to have full access to and to inspect and audit 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.

(C) Annual Jobs & Investment Report. Developer will be required to provide an annual report, in a form specified by DCED from time to time, regarding total real property, personal property, and employment, including jobs created and retained, at the Property.

10. GENERAL PROVISIONS.

(A) Assignment; Change of Control.

(i) Developer shall not, without the prior written consent of the City Manager, (a) assign its rights or interests under this Agreement, or (b) permit a Change of Control (as defined below); *provided, however* that the City hereby consents to Developer's collateral assignment of its rights under this Agreement to the lender(s) that are providing financing to Developer for the Project (including any mezzanine lender pledges).

(ii) Solely for the purposes of this Section 10(A), "**Change of Control**" means a change in the ownership of Developer such that FG and BC (collectively, "**Parent Parties**") or any entity directly or indirectly controlled by, or under common control with, Parent Parties collectively have less than a 50.1% direct or indirect voting interest in Developer and lack the power to direct or cause the {00327759-3}

direction of the management and policies of Developer, whether through the ownership of ownership interests in Developer, by contract, or otherwise.

(iii) The City acknowledges and agrees that (i) Developer will assign this Agreement and transfer the Property to an affiliate of Developer controlled by or under common control with the Parent Parties on or before the Financial Closing Date (the “**Affiliate**”) and (ii) an equity investment and acquisition of direct or indirect membership interests of the Affiliate by an equity investor (the “**Closing Date Transactions**”) that will not deprive the Parent Parties of the ability to cause the direction of the management and policies of the Affiliate (subject to certain customary consent rights of the equity investor). The City consents to the Closing Date Transactions. The consent provided in this Section is limited to the Closing Date Transactions and by virtue of such consent the City Manager shall not be obligated nor shall he or she be deemed to consent to any further transfers or sales of the Property, assignments of the Agreement or equity investments (to the extent such consent is required pursuant to this Agreement).

(iv) Notwithstanding clauses (i), (ii), and (iii) above, after the date of completion of construction, so long as no event of default has occurred and is continuing under this Agreement or any other Project Document, the City may, in good faith, withhold consent to a Change of Control only if (a) the proposed transfer is prohibited by applicable law or (b) the proposed transferee is, in the City’s reasonable judgment, not capable of performing the obligations of Developer under this Agreement and the other Project Documents, which judgment shall exclusively be based on the following factors: (1) the experience of the proposed transferee in operating assets and facilities of the same type as, and otherwise comparable in size and nature to, the Project and performing other projects, and (2) the past performance history and reputation of the proposed transferee and its direct or indirect controlling beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective affiliates (including the absence of criminal, civil or regulatory claims or actions against any such entity or person). The City Manager shall have 30 business days from the date on which he or she receives written notice in accordance with this Agreement of the proposed assignment or Change of Control (the “**City Manager Review Period**”) to determine whether he or she intends to consent thereto. The City Manager shall provide written notice to Developer of any decision to refuse to consent, including all material supporting information (the “**Rejection Notice**”), within the City Manager Review Period. In the event the City Manager fails to do so, he or she shall be deemed to have consented to such assignment or Change of Control. In the aforementioned notice of the proposed assignment or Change of Control, the Developer may also, with the City’s consent, substitute an indemnitor in the stead of Guarantor, and the City will, in accordance with the same process for approving or disapproving the Change of Control specified in this clause (iv), either approve or disapprove such proposed substitution; *provided, however* that the City may, in good faith, withhold consent to such proposed substitution only if (I) the proposed substitution is prohibited by applicable law, (II) the City has withheld its consent to the proposed Change of Control in accordance with this Agreement, or (III) the proposed indemnitor is, in the City’s reasonable judgment, not capable of performing the obligations under the Indemnity Agreement, which judgment shall exclusively be based on (x) the factors enumerated in clause (b)(2) of this clause (iv) with respect to the proposed indemnitor, and (y) an assessment of the proposed indemnitor’s assets and liabilities. If the City consents (or is deemed to have consented pursuant to this Agreement) to such substitution, the City shall take such steps as are reasonably necessary to effect such substitution.

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

(C) Amendments and Waivers. The provisions of this Agreement may be amended, waived or otherwise modified only by a written agreement signed by the 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. Each party hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

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

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

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

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

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

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

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

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

(M) 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 any of the laws and regulations described on Exhibit I (Additional Requirements) hereto which are applicable to the Project.

(N) Counterparts. The parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original, and all of which shall, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or electronic mail is as effective as executing and delivering this Agreement in the presence of the other parties.

(O) Legislative Contingency for TIF Ordinance. Notwithstanding anything to the contrary in this Agreement, this Agreement and any and all obligations of the parties (including the Completion Guaranty) except those that expressly survive termination shall automatically terminate and cease if the TIF Ordinance is not passed by City Council by September 30, 2021.

(P) Transfer of fee title to Port Authority. Nothing in this Agreement shall be construed to prohibit Developer from entering into a sale and leaseback arrangement with respect to the Property (the {00327759-3}

“Port Authority Arrangement”) in which fee title to the Property is held by the Port of Greater Cincinnati Development Authority (the **“Port Authority”**); *provided, however*, that (a) the purpose for the Port Authority Arrangement is to take advantage of the sales tax exemption on the purchase of Project building materials and (b) Developer shall provide the City with such documents and other information with respect to this arrangement as the City may reasonably request, including the final form of agreements for the Port Authority Arrangement, at least 10 business days prior to any conveyance of the Property to the Port Authority. Developer may not assign its rights, obligations, or any other interest under this Agreement to any other party except as in accordance with Section 10(A), but at any time, subject to the provisions of this paragraph, once Developer has obtained the fee interest in the Property, Developer may convey the same fee interest to the Port Authority, in the manner, and subject to the terms described, above. It is also understood and agreed that the Port Authority may convey interest back to Developer pursuant to the terms contained in the Port Authority Arrangement.

(Q) Recognition of City Support. In connection with the construction and opening of the Project, Developer shall acknowledge the support of the City with respect to the Project in all printed promotional materials (including but not limited to informational releases, pamphlets and brochures, construction signs, project and identification signage and stationary) and any publicity (such as but not limited to materials appearing on the Internet, television, cable television, radio or in the press or any other printed media) relating to the Project. In identifying the City as a Project partner, Developer 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.

11. FEES AND EXPENSES.

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

(B) Monitoring and Servicing Fee; Out-of-Pocket Expenses. The City shall withhold and retain from the Service Payments an annual monitoring and servicing fee equal to the greater of (i) 1.0% of the Service Payments paid (or due, if unpaid) with respect to the Property the prior calendar year, and (ii) the documented, reasonable out-of-pocket fees, costs, charges and expenses incurred by the City in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other Project Documents, together with the City’s monitoring and servicing costs and expenses with respect to the transactions contemplated thereby. To the extent Service Payments are not made or are ineligible to be made under the Service Agreement for any reason, the City may elect to require Developer to pay such monitoring and servicing fees in another manner. This Section 11(B) shall terminate and cease to be effective in the event the Rebate Payments permanently cease to be payable in accordance with the provisions of this Agreement and the other Project Documents. For the avoidance of doubt, suspension (without permanent termination) of the making of Rebate Payments shall not cause the provisions of this Section 11(B) of this Agreement to cease or be modified in any way (either permanently or during the period of any such suspension). The fees described in this Section 11(B) are not refundable once withheld by the City or otherwise paid.

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

Exhibit A-1 - *Site Plan; Legal Description; Parcel List*

Exhibit A-2 - *Sale Property Description*

Exhibit B - *Scope of Work, Budget and Source of Funds*

Exhibit C - *Form of Service Agreement*

Exhibit D-1 - *Form of Quitclaim Deed - Initial Conveyance*

Exhibit D-2 - *Form of Quitclaim Deed - City Conveyance*

Exhibit E - *Form of Completion Guaranty*

Exhibit F - *Disbursement of Funds*

Exhibit G - *Prior Developer’s Acknowledgment of Repurchase Right*

Exhibit H - *Developer’s Acknowledgment of Repurchase Right*

Exhibit I - *Additional Requirements* (incl. Addendum I - Prevailing Wage Determination)

SIGNATURES ON FOLLOWING PAGE

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

OTR PROJECT PARTNERS, LLC

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

CITY OF CINCINNATI

By: _____

Paula Boggs Muething, City Manager

Date: _____, 2021

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____

Karen Alder, City Finance Director

For the exclusive purpose of acknowledging and agreeing to the termination of the PSDA and Section 3(K) hereof with respect to the City's continuing repurchase rights in the Sale Property:

W LIBERTY & ELM, LLC

By: _____

Printed name: _____

Title: _____

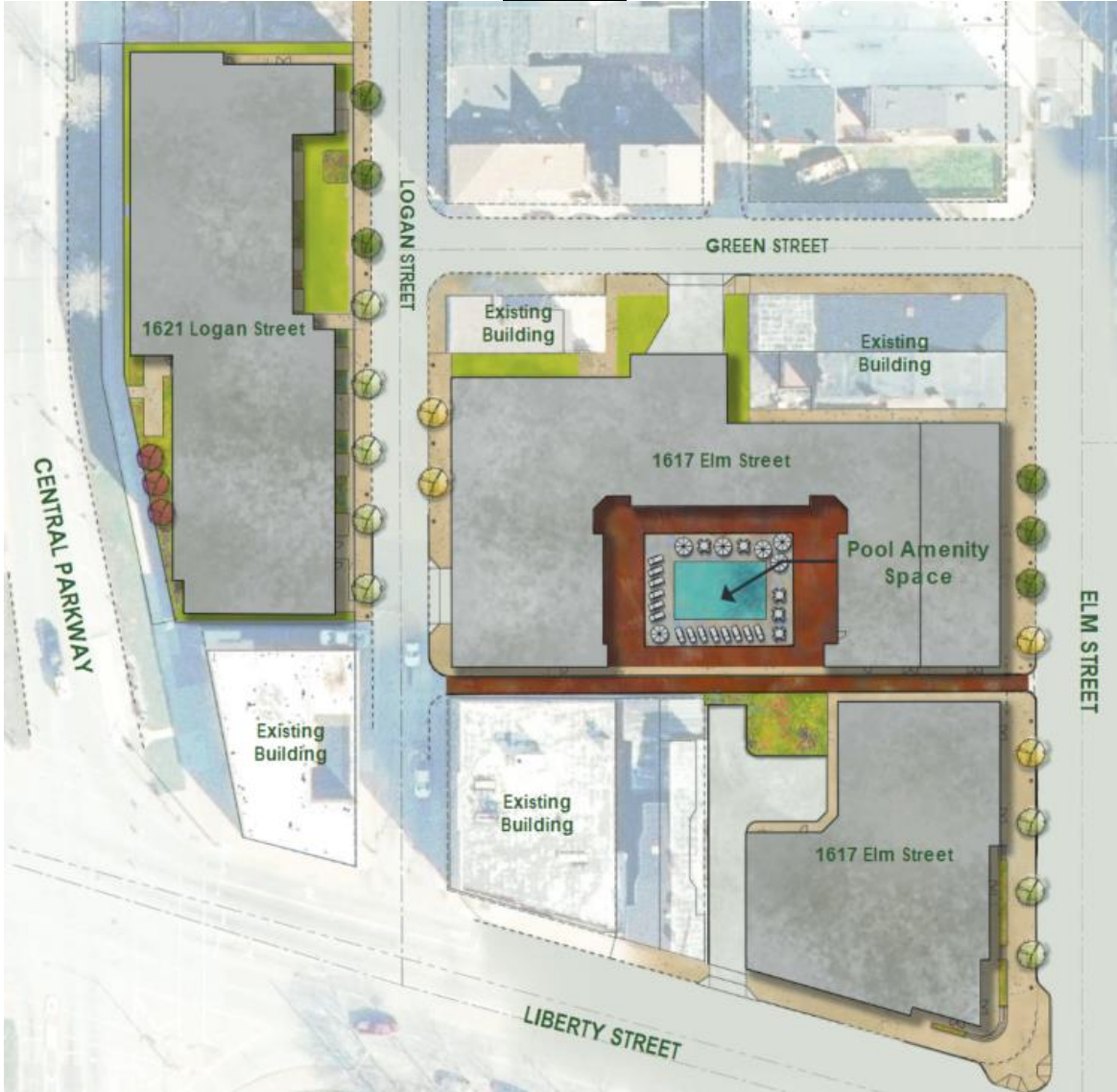
Date: _____, 2021

EXHIBIT A-1

to Development Agreement

SITE PLAN; LEGAL DESCRIPTION; PARCEL LIST

Site Plan



Legal Descriptions

1617 Elm Street Description:

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

BEGINNING at a set Cross Notch at the intersection of the North line of W. Liberty Street and the west line of Elm Street.

Thence along the north line of said W. Liberty Street, North 89°39'00" West, 136.77 feet to the southeast corner of a tract, conveyed to W Liberty & Elm, LLC as recorded in Official Record 13614, Page 383 of the Hamilton County Recorder's Office, (Hamilton County Auditor's Parcel 133-0003-0021), said point being referenced by a set Cross Notch at South 15°27'32" East, 3.00 feet;

Thence leaving the north line of said W. Liberty Street, along the east line of said Hamilton County Auditor's Parcel 133-0003-0021, North 15°27'32" West, 114.94 feet to a set Cross Notch;

Thence in part along the north line of aforesaid Hamilton County Auditor's Parcel 133-0003-00021 and in part with the north line of a tract conveyed to W Liberty & Elm, LLC as recorded in Official Record 13614, Page 383 of the Hamilton County Recorder's Office (Hamilton County Auditor's Parcel 133-0003-0020) and in part along a tract conveyed to 224 W Liberty School, LLC in Official Record 12664, Page 314, South 74°20'00" West, 111.91 feet to a set Cross Notch in the east line of Logan Street;

Thence with the east line of said Logan Street, North 15°36'55" West, 150.59 feet to the southwest corner of a tract conveyed to Baymiller Manor Limited Partnership as recorded in Official Record 9742, Page 4432 of the Hamilton County Recorder's Office, said point being referenced by a set Cross Notch at South 74°21'43" West, 3.00 feet;

Thence along the lines of said Baymiller Manor Limited Partnership, North 74°21'43" East, 69.50 feet to a set Cross Notch AND North 15°36'55" West, 25.00 feet to a point in the south line of Green Street, said point being referenced by a set Cross Notch at North 15°36'55" West, 3.00 feet;

Thence along the south line of said Green Street, North 74°21'43" East, 62.36 feet to the northwest corner of a tract conveyed to W Liberty & Elm, LLC as recorded in Official Record 13614, Page 383 (Hamilton County Auditor's Parcel 133-0003-0043), said point being referenced by a set Cross Notch at North 15°38'24" West, 3.00 feet;

Thence leaving the south line of said Green Street, along the west line of said Hamilton County Auditor's Parcel 133-0003-0043 and west line of a tract conveyed to W Liberty & Elm, LLC as recorded in Official Record 13614, Page 383 (Hamilton County Auditor's Parcel 133-0003-0041), South 15°38'24" East, 49.87 feet to a set Cross Notch at the southwest corner of said Hamilton County Auditor's Parcel 133-0003-0041;

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133-3-143

1617 Elm Street Description continued:

Thence along the south line of said Hamilton County Auditor's Parcel 133-0003-0041, North 74°29'32" East, 111.74 feet to a point in the west line of aforesaid Elm Street, said point being referenced by a set Cross Notch at North 74°29'32" East, 3.0 feet;

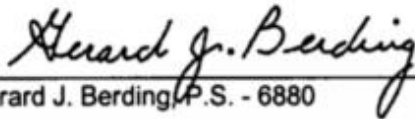
Thence along the west line of said Elm Street, South 15°30'28" East, 278.03 feet to the **POINT OF BEGINNING**.

Containing 1.2172 Acres and being subject to all legal easements and highways of record.

Being all of Hamilton County Auditor's Parcel No.'s 133-0003-0022 thru 0040 conveyed to W Liberty & Elm, LLC as recorded in Official Record 13614, Page 383 of the Hamilton County Recorder's Office and all of Hamilton County Auditor's Parcel No.'s 133-0003-0140 & 0141 conveyed to W Liberty & Elm, LLC as recorded in Official Record 13646, Page 1334 of the Hamilton County Recorder's Office.

Bearings Based On Registered Land Certificate Number 239453.

Prepared by G.J. BERDING SURVEYING, INC. on July 19, 2018. Based on a Plat of Survey prepared by G.J. BERDING SURVEYING, INC. on July 19, 2018.



Gerard J. Berding, P.S. - 6880

7-31-18
Date



[1621 Logan Street Description]¹:

Situated in Section 13, Town 3, Fractional Range 2 Between the Miamis, Mill Creek Township, The City of Cincinnati, Hamilton County, Ohio and being 1.0124 acres to be amended/re-zoned to Planned Development (PD) further described as follows:

Begin at the Intersection of the centerline of Logan Street and Green Street, said intersection being the True Point of Beginning:

thence, from the True Point of Beginning, departing the centerline of said Green Street and with the centerline of said Logan Street, South 09° 53' 39" East, 161.67 feet;

thence, departing centerline of said Logan Street, South 80° 00' 21" West, 175.00 feet to the centerline of Central Avenue;

thence, with the centerline of said Central Avenue, North 09° 53' 39" West, 252.00 feet;

thence, departing the centerline of said Central Avenue, North 80° 00' 21" East, 175.00 feet to the centerline of said Logan Street;

thence, with the centerline of said Logan Street, South 09° 53' 39" East, 90.33 feet to the True Point of Beginning containing 1.0124 acres of land more or less.

Basis of Bearings: State Plane Coordinates (3402) Ohio South Zone, NAD83(2011).

The above description was prepared from a rezoning exhibit made on August 18, 2020 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio and is a complete, proper and legal description of the property by deeds and plats of record.



¹ Note to draft: this legal description includes neighboring ROW. Please provide a legal description for solely the property.
{00327759-3}

Parcel List

1617 Elm Street:
133-0003-0143-00

1621 Logan Street:
133-0003-0007-90
133-0003-0006-90
133-0003-0005-90
133-0003-0004-90
133-0003-0003-90

EXHIBIT A-2
to Development Agreement

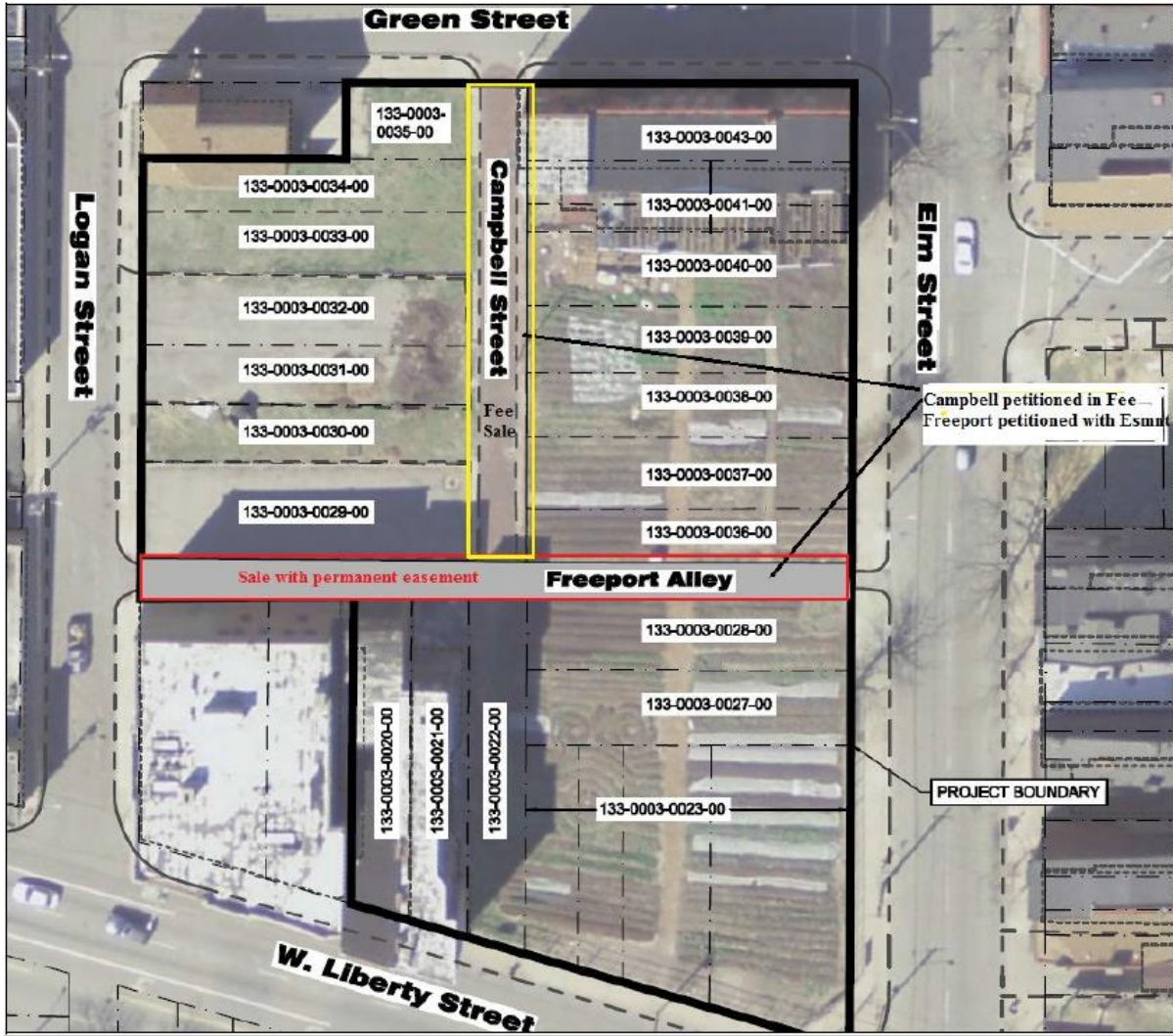


EXHIBIT B

to Development Agreement

SCOPE OF WORK, BUDGET, AND SOURCE OF FUNDS

I. **SCOPE OF WORK**

A mixed-use development near the corner of Liberty & Elm streets in Over the Rhine.

1617 ELM STREET

Construction of a 5 story, mixed-use development consisting of approximately 148 apartment units, 10,000 square feet of commercial space, an approximately 220-space structured parking garage, and restoration of Freeport Alley for pedestrian and bicycle use.

1621 LOGAN STREET

Demolition of vacant structure on site. New construction of a 6-7 story, residential apartment building with approximately 130 units.

II. **BUDGET, SOURCES & USES**

PROJECT DETAILS	TOTAL
Number of Units	278
Residential Gross SF	246,364
Retail Gross SF	11,325
Structured Garage Gross SF	83,712
Structured Parking Spaces	217
PROJECT SOURCES DETAILS	AMOUNT
Construction Loan	54,154,836
Limited Partner Equity	20,888,294
General Partner/ Sponsor Equity	2,320,922
TOTAL PROJECT SOURCES	\$77,364,051
PROJECT USES DETAILS	AMOUNT
Acquisition Costs	750,000
Pre-Development Costs / Due Diligence	150,000
Land Costs	4,500,000
Total Construction Costs / Hard Costs	55,643,721
Consulting Fees / Design / A&E	2,260,000
Total Financing Fees	293,983
Total Interest Expense	2,262,108
Other Financing Costs / Working Capital	150,000
Legal Cost	345,300
Total Pre-Opening / Marketing Costs	435,000
FF&E / Hardscape / Other Soft Costs	2,327,375
Lender Inspections	90,000
Impact Fees	321,646
Tenant Improvements	806,906
Broker Commissions	185,006
Insurance	138,025
Tax	931,479
Operating Deficits	55,079
TOTAL USES COSTS	\$77,364,051

EXHIBIT C

to Development Agreement

FORM OF SERVICE AGREEMENT

----- space above for Hamilton County Recorder -----

Contract No. _____

SERVICE AGREEMENT

(Liberty and Elm)

This Service Agreement (“**Agreement**”) is made and entered into as of the ____ day of _____, 2021 (the “**Effective Date**”), by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **OTR PROJECT PARTNERS, LLC**, an Ohio limited liability company, having an address of 14 West 15th Street, Cincinnati, Ohio 45202 (“**Owner**”).

Recitals:

A. Owner is the fee owner of the property located at 1617 Elm Street and 1621 Logan Street, Cincinnati, Ohio 45202, as described more fully in Exhibit A (*Legal Description*) hereto (the “**Property**”).

B. As described in the *Development Agreement* between the City and Owner dated [____], 2021 (the “**Development Agreement**”), Owner intends to make or cause to be made certain improvements to the Property (as described in the Development Agreement, the “**Project**”). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Development Agreement.

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

D. In furtherance of the public purpose and to facilitate the Project, and as authorized by Ordinance No. [____], passed by Cincinnati City Council on [____] (the “**TIF Ordinance**”), the City has established a so-called project-based TIF Exemption for the Property under Section 5709.41, Ohio Revised Code (“**ORC**”).

E. Under the TIF Ordinance and in accordance with ORC Section 5709.41, et seq. and this Agreement, the increased value of the Property shall be exempt from real property taxes, and all present and future owners of the Property, or any portion thereof, shall be required to make service payments in {00327759-3}

lieu of taxes, in semi-annual installments, in an amount equal to the amount of real property taxes that would have been paid on the Exempt Improvements (as defined below) had an exemption not been granted (“**Service Payments**”).

F. The Property is located within the Cincinnati City School District, and the Board of Education of the Cincinnati City School District (“**Board of Education**”) has, by resolution adopted on April 27, 2020, and by a Tax Incentive Agreement with the City effective as of April 28, 2020, approved an exemption of 100% of the assessed valuation of the Exempt Improvements for thirty (30) years (subject to the obligation of the City to make payments to the Board of Education as provided in Section II.C.2 of that agreement, which payments are referred to herein as the “**School Board Payments**”).

G. As provided in the Development Agreement, the City intends to use the Service Payments to (i) pay any fees due to the Hamilton County Auditor with respect to the Service Payments, (ii) make the School Board Payments, (iii) cover certain fees to the City provided in the Development Agreement, (iv) retain the VTICA Contribution, (v) provide Owner with certain Rebate Payments to promote the economic viability of the Project and thereby contributing to the urban redevelopment of Over-the-Rhine neighborhood, and (vi) support such urban redevelopment purposes as are provided in the Development Agreement and the TIF Ordinance, in each case in the amounts identified herein and subject to the terms hereof.

H. The parties intend that this Agreement, as amended and supplemented from time to time, shall constitute the agreement contemplated by ORC Section 5709.41, et seq. and shall define the respective rights and obligations of Owner and the City with respect to the Service Payments.

I. Execution of this Agreement has been authorized by City Council by the TIF Ordinance.

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

1. **COMPLETION OF PROJECT.** Owner shall cause the Project to be completed in accordance with the terms of the Development Agreement. Failure to use and operate the Project in the manner contemplated by the Development Agreement shall not relieve Owner of its obligations to make Service Payments as required hereunder. Owner shall develop the Project in accordance with the Development Agreement throughout the Exemption Period (as hereinafter defined), and shall comply with the terms of the Development Agreement in all respects.

2. **OBLIGATION TO MAKE SERVICE PAYMENTS.**

A. Declaration that Exempt Improvements are a Public Purpose. The City hereby confirms that, pursuant to ORC Chapter 5709.41, et seq. and the TIF Ordinance, the City declared that 100% of the assessed value of the improvements (as defined in ORC Chapter 5709.41) to the Property, including the Project (collectively, the “**Exempt Improvements**”) constitutes a public purpose and is entitled to exemption from real property taxes for a period of thirty (30) years for a period currently expected to commence in tax year 2023 (the “**Exemption Period**”).

B. Commencement of Service Payments. Owner shall commence paying Service Payments no later than the final date for payment (the last day that payment can be made without penalty or interest) of the first semi-annual installment of real property taxes in the first calendar year after the first tax year in which any Exempt Improvements appear on the Hamilton County Auditor’s tax duplicate. (For example, if any Exempt Improvements first appear on the tax rolls on January 1, 2023, Owner’s first semi-annual tax payment will be for the tax bill for the First Half 2023, which will become due and payable to the County Treasurer on or about January 2024.) Owner shall pay Service Payments in semi-annual installments (i) on the earlier of such final date for payment of the first semi-annual installment of real property taxes, or February 1, in each year, and (ii) on the earlier of such final date for payment of the second semi-annual installment of real property taxes, or August 1, in each year (each such final date for payment is referred to herein as a “**Service Payment Date**”). Owner shall continue to make Service

Payments until such time as Owner has paid the final Service Payment applicable to the Exemption Period.

C. Amount of Service Payments. Each semi-annual Service Payment shall be paid to the Hamilton County Treasurer in an amount equal to one-half ($\frac{1}{2}$) of the annual amount that would have been payable in that year as real property taxes with respect to the Exempt Improvements had an exemption not been granted. However, if after the first semi-annual Service Payment has been determined and paid, the total annual amount for that year is adjusted by the taxing authorities, the amount of the second semi-annual Service Payment shall be adjusted accordingly. The Service Payments shall vary as the assessed value of the Exempt Improvements and the applicable tax rate vary from time to time.

D. Estimation. If, as of the date any Service Payment is due, the amount of the real property taxes that would have been payable on the Exempt Improvements (if not exempt) cannot be or has not been finally determined, the amount of such taxes shall be estimated by the Hamilton County Auditor or by the City (even though such taxes may be subject to contest, later determination, or adjustment because of revaluation of the Exempt Improvements) for the applicable tax year. If the sum of Service Payments so calculated and paid in any year is subsequently determined not to be equal to the total amount of real property taxes that would have been paid in that year with respect to the Exempt Improvements (if not exempt), Owner or the City shall promptly pay or repay any deficiency or excess, as appropriate, to the other within thirty (30) days after written demand.

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

3. APPLICATION OF SERVICE PAYMENTS.

A. Rebate Payments. Rebate Payments shall be made in the amounts described in, and subject to all terms and conditions of, the Development Agreement.

B. Timing of Rebate Payments. Rebate Payments shall be made at the times described in the Development Agreement.

C. Change in Use; Subdivision or Ownership by Multiple Legal Entities.

(i) Change in Use. Notwithstanding the foregoing, and without limiting any of the City's remedies under this Agreement or the Development Agreement, if the Project is no longer to be used for commercial and multi-family residential purposes (unless the City has otherwise agreed in accordance with the terms of this Agreement), the City shall no longer be obligated to make the Rebate Payments and the portion of the Service Payments which would otherwise have been applied to the Rebate Payments shall be deemed to be Residual Service Payments to which Owner is in no way entitled.

(ii) Subdivision or Ownership by Multiple Legal Entities. Without the City's prior written consent in the form of an amendment to this Agreement making such administrative and ministerial changes as may be deemed reasonably necessary by the City, title to the Property shall not be held by more than one legal entity at a time (it being acknowledged and agreed by the City that ownership

of the fee title through one legal entity, which is itself owned by multiple entities, is not ownership of the fee title to the Property by multiple entities as contemplated hereby). The City will not unreasonably withhold its agreement to such an amendment so long as the proposed amendment is otherwise consistent with this Agreement and the Development Agreement. For the avoidance of doubt, the City shall be under no obligation to enter into such an amendment if Owner seeks to include terms in such amendment that are unrelated or in addition to the division of ownership of the Property as described in this clause (ii); *provided, however*, that the City may include, as a term of such amendment, that the City will solely be required to provide notices or otherwise negotiate with one "Owner" entity as an agent for others which may succeed to Owner's rights hereunder. The City shall in no event be required to divide the Rebate Payments and pay portions of the Rebate Payments to various entities unless the City expressly agrees to do so in writing.

D. No Other Source. The City is in no way obligated under this Agreement or any other Project Document to provide Owner with any funds other than the Rebate Payments, nor is the City in any way obligated to provide the Rebate Payments from any source other than the Service Payments it actually receives in respect of the Exempt Improvements. Owner acknowledges and agrees that if the application of Service Payment proceeds to the Rebate Payments is deemed illegal or impermissible by a court of law following a non-appealable final adjudication thereof (it being agreed by the City that it shall not object to Owner's participation, at Owner's own expense, in any such legal proceedings), the Rebate Payments shall not be made and the portion of the Service Payments which would otherwise have been applied to the Rebate Payments shall be deemed to be Residual Service Payments to which Owner is in no way entitled. In such a circumstance, the City shall be under no obligation to provide compensation or reimbursement to Owner for the loss of the Rebate Payments or otherwise make equivalent payments to Owner from alternative sources.

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

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

A. Recording. Promptly after the execution of this Agreement, Owner shall cause this Agreement to be recorded in the Hamilton County, Ohio Recorder's Office, at its expense, prior to any mortgage, assignment or other conveyance of any part of the Property. All instruments of conveyance of the Property or Owner's ownership of the Property (or portions thereof) to subsequent mortgagees, successors, assigns or transferees shall be subject to this Agreement.

B. Covenants Running with the Land. The obligation to perform and observe the agreements on Owner's part contained herein shall be covenants running with the land and shall be binding and enforceable by the City against Owner and its successors-in-interest and transferees as owners from time to time of the fee simple interest in the Property.

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

6. PAYMENT OF TAXES; CONTESTS.

A. Payment of Taxes. With respect to real property taxes that are not exempted under this Agreement, Owner shall pay or cause to be paid, as the same become due (but subject to the 5 day Cure Period for Payment Defaults described in the Development Agreement), all such taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property and/or the non-exempt improvements or any personal property or fixtures of Owner installed or brought thereon (including, without limitation, any taxes levied against Owner with respect to income or profits from operations at the Property and which, if not paid, may become or be made a lien on the Property or the Exempt Improvements). The Owner acknowledges that it, and not the City, is responsible for the payment of all utility and other charges incurred in the operation, maintenance, use and occupancy of the Property and Exempt Improvements.

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

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

8. COVENANTS AND REPRESENTATIONS. Owner hereby reaffirms its representations and warranties contained in the Development Agreement and any other Project Documents as of the Effective Date of this Agreement.

9. EXEMPTION APPLICATION. Owner shall prepare, execute and (following the City's prior receipt of copies for review and approval in the City's sole discretion) file, in a timely fashion after the Effective Date, such applications, documents and other information with the appropriate officials of the State of Ohio and Hamilton County, or other public body as may be required to effect and maintain during the Exemption Period as described in ORC Chapter 5709 the exemption from real property taxation as contemplated by said Chapter. Owner and the City currently expect that such exemption from real property taxation shall apply initially to the 2023 tax year. Owner shall continuously use due diligence and employ commercially reasonable efforts to keep such exemption in force, not permitting the same to lapse or be suspended or revoked for any reason within Owner's control. In the event that subsequent to the allowance of such exemption, the same is at any time revoked or suspended due to the act or omission of Owner, Owner shall nevertheless continue to make Service Payments throughout the Exemption Period; *provided, however* that such Service Payments shall only be required during any period of revocation or suspension to the extent (and in the amounts) necessary to cover debt service and other financing costs related to any bonds the City has issued prior to the date of revocation or suspension of the exemption which are secured by the City to be repaid, in whole or in part, by the Service Payments (or such portion of the Service Payments as the City may be entitled to pledge as collateral or utilize for repayment of debt under the terms of this Agreement).

10. DEFAULTS AND REMEDIES. If Owner fails to make any Service Payment when due (but subject to the 5 day Cure Period for Payment Defaults described in the Development Agreement) (time being of the essence), or if Owner fails to observe or perform any other obligation hereunder (including Owner's obligation to comply with the terms of the Development Agreement) and such other

failure continues for more than thirty (30) days after the City notifies Owner in writing thereof, the City shall be entitled to exercise and pursue any and all rights and remedies available to it hereunder, at law or in equity, including, without limitation, (i) foreclosure of the lien created hereby, and (ii) terminating this Agreement without modifying or abrogating Owner's obligation to make Service Payments; *provided, however,* that if the nature of the default (other than a Payment Default) is such that it cannot reasonably be cured during an applicable cure period, Owner shall not be in default under this Agreement so long as Owner commences to cure the default within such cure period and thereafter diligently completes such cure within sixty (60) days after Owner's receipt of the City's initial notice of default. Owner shall pay to the City upon demand an amount equal to all costs and damages suffered or incurred by the City in connection with such default, including, without limitation, attorneys' fees. Waiver by the City of any default shall not be deemed to extend to any subsequent or other default under this Agreement. All rights and remedies hereunder are cumulative.

11. DURATION OF AGREEMENT. This Agreement shall become effective on the Effective Date and, except with respect to those provisions expressly stated to survive the expiration of this Agreement, shall expire on the later of (i) the day following the date of payment of the final Rebate Payment to be made under the Development Agreement, and (ii) the day following the date of payment of the final Service Payment applicable to the Exemption Period. This Agreement shall survive any foreclosures, bankruptcy, or lien enforcement proceedings. Upon such expiration, the City shall deliver to Owner such documents and instruments as Owner may reasonably request to evidence such expiration.

12. TRUSTEE. Owner hereby acknowledges and agrees that the City may, following the Effective Date, enter into a trust agreement or other like agreement with a trustee selected by the City for the purposes of carrying out and/or administering some or all of the City's obligations under this Agreement, as determined by the City. If the City generally implements such an arrangement for transactions, such as those contemplated by this Agreement, involving tax increment financing under Ohio Revised Code Section 5709.41 or tax increment financing generally, then Owner agrees to (i) execute such documents or acknowledgments as may be reasonably required in order for the City to procure the services of such trustee, including, if applicable, a trust agreement, and (ii) pay the fees and expenses of the trustee (or, at the City's option, reimburse the City for the fees and expenses of the trustee paid by the City).

13. GENERAL PROVISIONS.

A. Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same Agreement.

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

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

D. Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby, and in lieu of each provision that is illegal, invalid or unenforceable, there shall be added as a part of this Agreement provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

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

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

G. Exhibit. The following exhibit is attached hereto and made a part hereof:
Exhibit A - Legal Description

SIGNATURES ON FOLLOWING PAGE

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

OTR PROJECT PARTNERS, LLC

By: _____

Name: _____

Title: _____

Date: _____, 2021

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

Date: _____, 2021

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

NOTARY BLOCKS ON FOLLOWING PAGE

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____ (name), _____ (title) of OTR Project Partners, LLC, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

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

Notary Public
My commission expires: _____

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

**EXHIBIT A
TO
SERVICE AGREEMENT**

LEGAL DESCRIPTION

[INTENTIONALLY OMITTED]

EXHIBIT D-1

to Development Agreement

FORM OF QUITCLAIM DEED – INITIAL CONVEYANCE

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

QUITCLAIM DEED

OTR PROJECT PARTNERS, LLC, an Ohio limited liability company, the address of which is [_____] (“**Grantor**”), for valuable consideration paid, hereby grants and conveys to the **CITY OF CINCINNATI**, an Ohio municipal corporation (“**Grantee**”), having an address at 801 Plum Street, Cincinnati, Ohio 45202, all Grantor’s right, title and interest in and to the real property described on Exhibit A (Legal Description) hereto.

The City’s acceptance of the Property was authorized by Ordinance No. _____, passed by City Council on _____, 2021.

Prior instrument reference: Official Record _____, Page _____, Hamilton County, Ohio Records.

Executed on _____, 2021.

OTR PROJECT PARTNERS, LLC

By: _____

Name: _____

Title: _____

Date: _____, 2021

NOTARY BLOCK FOLLOWS

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____ (name), _____ (title) of OTR Project Partners, LLC, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

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

Exhibit A to Quitclaim Deed

Legal Description

[INTENTIONALLY OMITTED]

EXHIBIT D-2
to Development Agreement

FORM OF QUITCLAIM DEED – CITY CONVEYANCE

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

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), having an address of 801 Plum Street, for valuable consideration paid, hereby grants and conveys to **OTR PROJECT PARTNERS, LLC**, an Ohio limited liability company, the address of which is [_____] (“**Grantee**”), all of the City’s right, title and interest in and to the real property described on Exhibit A (*Legal Description*) hereto.

This conveyance was authorized by Ordinance No. [_____] , passed by Cincinnati City Council on [_____].

Prior instrument reference: Official Record _____, Page _____, Hamilton County, Ohio Records.

Executed on _____, 2021.

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

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

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by: Kaitlyn M. Geiger, Esq., City of Cincinnati Law Department, 801 Plum Street, Suite 214, Cincinnati, Ohio 45202

Exhibit A to Quitclaim Deed

Legal Description

[INTENTIONALLY OMITTED]

EXHIBIT E
to Development Agreement

FORM OF COMPLETION GUARANTY

[to be attached]

EXHIBIT F

to Development Agreement

DISBURSEMENT OF FUNDS

(A) Conditions to be Satisfied Prior to Disbursement of Funds. The City shall be under no obligation to disburse the funds of up to \$29,736.72 to Developer for the construction of Public Improvements (the "**Funds**") until the following conditions are satisfied:

(i) Developer shall have provided the City with evidence of insurance required under this Agreement;

(ii) Developer shall have provided the City with evidence that it has obtained all licenses, permits, governmental approvals and the like necessary for the construction work;

(iii) the parties shall have approved the construction budget and construction schedule for the Public Improvements;

(iv) on-site construction for the Public Improvements shall have commenced and be proceeding in accordance with the City approved plans and proposed construction schedule;

(v) Developer shall have provided the City with such other documents, reports and information relating to the Project as the City may reasonably request; and

(vi) Developer shall not be in default under this Agreement.

(B) Disbursement of Funds on a Pro Rata Basis. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall disburse the Funds from the Project account. The City shall disburse the Funds on a reimbursement basis and on a "pro rata" basis with the other sources of funds for the Public Improvements; i.e., the City's Funds shall not be "first in". (For example, if the Funds represent one fourth (1/4th) of the total funds for the Public Improvements, at no time shall the amount of the disbursed Funds exceed 1/4th of the total amount of the disbursed funds for the Public Improvements.) Developer shall request the Funds and shall use the Funds solely to reimburse itself for documented hard construction costs paid by Developer to third parties for construction of the Public Improvements and for no other purpose. Nothing in this Agreement shall permit, or shall be construed to permit, the expenditure of Funds for the acquisition of supplies or inventory, or for the purpose of purchasing materials not used in the construction, or for establishing a working capital fund, or to pay for soft costs, or for any other purpose expressly disapproved by the City. Developer shall not request a disbursement of Funds for any expenditure that is not itemized on or contemplated by the approved budget or if the costs for which the disbursement is being requested exceeds the applicable line item in the budget; however, Developer may request, in writing, that funds be transferred between line items, with the City's approval thereof not to be unreasonably withheld. Disbursements from the Project account shall be limited to an amount equal to the actual cost of the work, materials and labor incorporated in the work up to the amount of such items as set forth in Developer's request for payment. Anything contained in this Agreement to the contrary notwithstanding, the City shall not be obligated to make or authorize any disbursements from the Project account if the City determines, in its reasonable discretion, that the amounts remaining from all funding sources with respect to the construction of the Public Improvements are not sufficient to pay for all the costs to complete construction. Developer acknowledges that the obligation of the City to disburse the Funds to Developer for construction shall be limited to the Funds to be made available by the City under this Agreement. Developer shall provide all additional funds from other resources to complete the Public Improvements. Notwithstanding anything in this Agreement to the contrary, the City's obligation to make the Funds for construction available to Developer, to the extent such Funds have not been disbursed, shall terminate ninety (90) days following completion of construction of the Public Improvements.

(C) Draw Procedure

(i) Frequency. Developer may make disbursement requests no more frequently than once in any thirty (30) day period.

(ii) Documentation. Each disbursement request shall include the following: For construction costs shown on the approved budget, Developer shall submit a draw request form provided by the City, with the following attachments: (1) an AIA G-702-703 Form (AIA) or such other similar form acceptable to the City, (2) sworn affidavits and/or unconditional lien waivers (together with copies of paid invoices, contracts, or other supporting data) from all contractors, subcontractors and materialmen covering all work, labor and materials for the work through the date of the disbursement and establishing that all such work, labor and materials have been paid for in full, (3) waivers or disclaimers from suppliers of fixtures or equipment who may claim a security interest therein, and (4) such other documentation or information requested by the City that a prudent construction lender might request. All affidavits and lien waivers shall be signed, fully-executed originals.

(D) Retainage. After review and approval of a disbursement request, the City shall disburse ninety percent (90%) of the amount requested, less retainage equal to ten percent (10%) thereof. The retained amount shall be disbursed when (i) construction of the Public Improvements has been completed, (ii) the City has obtained final lien waivers and all other conditions to payment set forth in this Agreement have been satisfied with respect to such payment, (iii) Developer has provided the City with a complete set of "as built" drawings for the Public Improvements if required by DOTE, and (iv) Developer has complied with all of its other obligations under this Agreement as determined by the City in its sole discretion.

(E) Estoppel Certification. A request for the disbursement of Funds shall, unless otherwise indicated in writing at the time Developer makes such request, be deemed as a representation and certification by Developer that (i) that all work done and materials supplied to date are in accordance with the City-approved plans and specifications for the Public Improvements and in strict compliance with all legal requirements as of the date of the request, (ii) the Public Improvements are being completed in accordance with the City-approved budget and construction schedule, and (iii) Developer and the City have complied with all of their respective obligations under this Agreement. If Developer alleges that the City has been or is then in default under this Agreement at the time Developer makes such request, and if the City disputes such allegation, the City shall not be obligated to make or authorize such disbursement until the alleged default has been resolved.

EXHIBIT H

to Development Agreement

PRIOR DEVELOPER'S REPURCHASE RIGHT ACKNOWLEDGMENT

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

ACKNOWLEDGMENT OF REPURCHASE RIGHT

W LIBERTY & ELM, LLC, an Ohio limited liability company, the address of which is [_____] (“**Grantor**”), being the owner of the real property described on Exhibit A (Legal Description) hereto, hereby acknowledges that the repurchase right of the City of Cincinnati, Ohio (the “**City**”) set forth in that certain *Quitclaim Deed* from the City to Grantor, recorded on April 13, 2018, in Hamilton County Recorder Official Record Book 13646, Page 1334, as modified by that certain Development Agreement by and between the City and Grantor dated _____ (the “**Development Agreement**”), remains in effect until released in accordance with the provisions of the Development Agreement or otherwise with the express written consent of the City.

Executed on _____, 2021.

W LIBERTY & ELM, LLC

By: _____

Name: _____

Title: _____

Date: _____, 2021

NOTARY BLOCK FOLLOWS

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____ (name), _____ (title) of W Liberty & Elm, LLC, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

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

Exhibit A to Acknowledgment of Repurchase Right

Legal Description

[INTENTIONALLY OMITTED]

EXHIBIT I

to Development Agreement

DEVELOPER’S REPURCHASE RIGHT ACKNOWLEDGMENT

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

ACKNOWLEDGMENT OF REPURCHASE RIGHT

OTR PROJECT PARTNERS, LLC, an Ohio limited liability company, the address of which is [_____] (“**Grantor**”), being the owner of the real property described on Exhibit A (Legal Description) hereto, hereby acknowledges that the repurchase right of the City of Cincinnati, Ohio (the “**City**”) set forth in that certain *Quitclaim Deed* from the City to W Liberty & Elm, LLC, an Ohio limited liability company, recorded on April 13, 2018, in Hamilton County Recorder Official Record Book 13646, Page 1334, as modified by that certain Development Agreement by and between the City and Grantor dated _____ (the “**Development Agreement**”), remains in effect until released in accordance with the provisions of the Development Agreement or otherwise with the express written consent of the City.

Executed on _____, 2021.

OTR PROJECT PARTNERS, LLC

By: _____

Name: _____

Title: _____

Date: _____, 2021

NOTARY BLOCK FOLLOWS

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____ (name), _____ (title) of OTR Project Partners, LLC, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

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

Exhibit A to Acknowledgment of Repurchase Right

Legal Description

[INTENTIONALLY OMITTED]

EXHIBIT I

to 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 {00327759-3}

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.²

(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

² Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.

encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

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

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

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

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

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

(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

{00327759-3}

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

REQUEST FOR PROJECT WAGE DETERMINATION

DATE RECEIVED: 10/8/2020

ORIGINAL ASSIGNED NUMBER: 2020-211

DEI USE ONLY

Fillout and Circle all that Apply Below:

FUNDING GUIDELINES:
(State or Federal)

RATES THAT APPLY:
(Building, Heavy, Highway, Residential)
Prevailing wage does not apply.

DECISION NUMBER: N/A

MODIFICATIONS: N/A

DECISION DATE: N/A

EXPIRATION DATE: N/A

SUPERSEDES DECISION NUMBER: N/A

DETERMINATION BY:
Name: Dionne Cherry

Title: Contract Compliance Specialist

Date: 10/14/2020

APPROVED BY:

Tina Wilkins Hoana
INTERIM DEP DIRECTOR, DEPARTMENT OF
ECONOMIC INCLUSION

REQUESTING AGENCY OR DEPT:
Economic Development

**CONTACT PERSON AND PHONE
NUMBER:**
John Reiser ext. 6261

Requested Date: 10/08/2020
Estimated Advertising Date: 01/01/2021
Estimated Bid Opening Date: 02/01/2021
Estimated Starting Date: 02/15/2021

SOURCE AND FUND NUMBER

CITY	FUND	n/a
STATE	FUND	n/a
COUNTY	FUND	n/a
FEDERAL	FUND	n/a

PROJECT ACCOUNT NUMBER: n/a

AMT. OF PUB. FUNDING \$: 0.00

TOTAL PROJECT DOLLARS: 78,408,031

NAME OF PROJECT
Liberty & Elm Development

COMMENTS:

As described, no direct public funds will be used on the project. Therefore, neither State nor Federal prevailing wage will apply.

Further, local prevailing wage does not apply as the project does not meet the definition of a "Development Agreement" under CMC 321-1-D2(b)(1).

Note: Any changes to the scope, funding or developer on the project, or the failure of the project to start within 90 days of the determination will require revisions to this wage determination.

TYPE OF WORK

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

PROJECT LOCATION

The project site consists of 1617 Elm Street, located at the northwest corner of Liberty Street and Elm Street, and 1621 Logan Street, which sits between Logan Street and Central Parkway. The existing building at 1621 Logan Street will be demolished. Two new buildings are proposed on the project site. Once complete, the two buildings will consist of approximately 278 residential units, a 197 space parking garage and 11,000 square feet of commercial space.

PROJECT FUNDING SOURCE

No direct funding is being awarded. City incentive is a 5709.41 TIF for a term of 30 years.

PROJECT SCOPE OF WORK AND BUDGET

OTR Partner Projects, LLC proposes the development of approximately 278 market-rate residential apartment units, covered parking with one hundred and ninety-seven (197) parking spaces, and eleven thousand (11,000), square feet of commercial space. The project will cost an estimated \$78,408,031.

DEI 217 Form
REV: 6/12/2017