

EMERGENCY

City of Cincinnati

WPW

AWB

An Ordinance No. _____

- 2020

AUTHORIZING the City Manager to execute a *Funding Agreement* with WHRF Holdings III, LLC and Nassau Avenue Investments, LLC, providing for a forgivable loan of \$1,000,000 to support acquisition, demolition, and development of the former Kroger Site in the neighborhood of Walnut Hills; **ESTABLISHING** new capital improvement program project account no. 980x164x211635, "Walnut Hills Former Kroger Site," for the purpose of providing resources to facilitate the acquisition, demolition, and development of the former Kroger Site in the neighborhood of Walnut Hills; **AUTHORIZING** the transfer and return to source Capital Funds 757 and 858 of the sum of \$2,000,000 from various capital improvement program project accounts for the purpose of decreasing certain existing capital improvement program project accounts, according to Section 1 of the attached Schedule of Transfer; **AUTHORIZING** the transfer and appropriation of the sum of \$2,000,000 from the unappropriated surplus of Capital Funds 757 and 858 to new or existing capital improvement program project accounts for the purpose of providing resources for certain capital improvement program project accounts, according to Section 2 of the attached Schedule of Transfer; and further **DECLARING** certain herein described projects to be for a public purpose.

WHEREAS, 954 E. McMillan Street located in the Walnut Hills neighborhood of Cincinnati (the "Property") is the site of a former and now vacant Kroger grocery store; and

WHEREAS, under a certain long-term ground lease the Walnut Hills Redevelopment Foundation (the "WHRF") owns or controls the improvements on the Property, including but not limited to the former grocery store structure, but it does not own the land underlying the improvements; and

WHEREAS, in partnership with The Model Group, Inc., the WHRF seeks to acquire ownership of the land underlying the improvements on the Property, repay the debt associated with the existing ground lease, terminate said ground lease, and demolish the existing improvements on the Property so that the site can be fully redeveloped (the "Project"); and

WHEREAS, the redevelopment of the Property will consist of multiple phases; will include development of both commercial and residential space, including affordable housing; and will include an investment of approximately \$75,000,000 to \$100,000,000; and

WHEREAS, in the interim, prior to the full redevelopment, the site or portions of the site will be utilized as a temporary parking lot to support the Walnut Hills Business District; and

WHEREAS, in order to support the feasibility of the Project, the City's Department of Community and Economic Development has recommended that the City provide to the WHRF (or an affiliate thereof) a forgivable loan totaling \$1,000,000, which will be used to in part finance the costs of the acquisition of the Property; and

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

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, in order to create or preserve jobs and employment opportunities, and to improve the economic 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, or not-for-profit corporations designated by them, to acquire, construct, enlarge, improve or equip, and to sell, lease, exchange or otherwise dispose of, property, structures, equipment and facilities for industry, commerce, distribution and research, and to make loans and to provide moneys for the acquisition, construction, enlargement, improvement or equipment of such property, structures, equipment, and facilities; and

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

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

Section 1. That the City Manager is hereby authorized to execute a *Funding Agreement* with WHRF Holdings III, LLC and Nassau Avenue Investments, LLC (collectively, “Developer”), in substantially the form attached to this ordinance as Attachment A (the “Agreement”), pursuant to which: (i) the City will make a \$1,000,000 forgivable loan to be used for acquisition of certain property located at 954 E. McMillan Street, Cincinnati, Ohio 45206, which is the former Kroger site in the neighborhood of Walnut Hills (the “Property”); and (ii) Developer will demolish the existing structure on the Property and create a temporary parking lot to support the Walnut Hills Business District, which will be replaced upon full redevelopment of the Property (the “Project”).

Section 2. That the Director of Finance is authorized to establish new capital improvement program project account no. 980x164x211635, “Walnut Hills Former Kroger Site,” for the purpose of providing resources to facilitate the acquisition, demolition, and development of the Property.

Section 3. That the transfer and return to source Capital Funds 757 and 858 of the sum of \$2,000,000 from various capital improvement program project accounts is hereby authorized for the purpose of decreasing certain existing capital improvement program project accounts, according to Section 1 of the attached Schedule of Transfer.

Section 4. That the transfer and appropriation of the sum of \$2,000,000 from the unappropriated surplus of Capital Funds 757 and 858 to new or existing capital improvement program project accounts is hereby authorized for the purpose of providing resources for certain capital improvement program project accounts, according to Section 2 of the attached Schedule of Transfer.

Section 5. That Council hereby declares that the “Walnut Hills Former Kroger Site” capital improvement program project as herein described serves a public purpose because the project will foster local improvements and investment, increase neighborhood vitality, and because each project has an estimated life or period of usefulness of five years or more.

Section 6. That Council authorizes the appropriate City officials to take all necessary and proper actions as they deem necessary or appropriate to fulfill the terms of this ordinance and the Agreement, including without limitation executing any and all plats, deeds, leases, closing documents, agreements, releases, amendments, and other instruments pertaining to the Project, and including granting and accepting any and all associated easements.

Section 7. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to enable Developer to move forward with the Project as soon as possible and finalize all necessary

financing, which will result in the creation of jobs and the stimulation of economic growth in the Walnut Hills neighborhood of Cincinnati at the earliest possible date.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

Section 1. SCHEDULE OF TRANSFER

Return to Source: \$2,000,000.00

Section 1.
Page 1 of 1.

DEPT. DIVISION	PROJECT OR FUND TO BE TRANSFERRED FROM		PROJECT OR FUND TO BE TRANSFERRED TO	TOTAL BUDGETED COST ALL FUNDS		AMOUNT TO BE APPROPRIATED OR TRANSFERRED	
	NUMBER:	DESCRIPTION		PRIOR	REVISED		
Community & Economic Dev. Economic Dev. 164	181606	Soccer Stadium Public Infrastructure Improvements	757	Miscellaneous Permanent Improvement Fund	6,383,000.00	5,383,000.00	1,000,000.00
Transportation & Engineering Planning 232	212387	East Walnut Hills Two-Way Conversion	858	Street Improvement Bond Fund	1,000,000.00	0.00	1,000,000.00

Section 2. SCHEDULE OF TRANSFER

Reprogram: \$2,000,000.00

Section 2.
Page 1 of 1.

DEPT. DIVISION	PROJECT OR FUND TO BE TRANSFERRED FROM		PROJECT OR FUND TO BE TRANSFERRED TO	TOTAL BUDGETED COST ALL FUNDS		AMOUNT TO BE APPROPRIATED OR TRANSFERRED	
	NUMBER:	DESCRIPTION		PRIOR	REVISED		
Community & Economic Dev. Economic Dev. 164	757	Miscellaneous Permanent Improvement Fund	211635	Walnut Hills Former Kroger Site	0.00	1,000,000.00	1,000,000.00
	858	Street Improvement Bond Fund	181606	Soccer Stadium Public Infrastructure Improvements	5,383,000.00	6,383,000.00	1,000,000.00

ATTACHMENT A

Contract No. _____

FUNDING AGREEMENT

among

CITY OF CINCINNATI

and

WHRF HOLDINGS III, LLC

and

NASSAU AVENUE INVESTMENTS, LLC

**Project: Acquisition of property at 954 E. McMillan Street
(including a 7-yr loan in the amount of \$1,000,000)**

Date: _____, 2020

FUNDING AGREEMENT

This FUNDING AGREEMENT (the "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and among the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 805 Central Avenue, Suite 700, Cincinnati, OH 45202; Attention: Department of Community and Economic Development (the "**City**"); **WHRF HOLDINGS III, LLC**, an Ohio nonprofit limited liability company, the address of which is c/o Walnut Hills Redevelopment Foundation, Inc. 656 E McMillan Street, Cincinnati, OH 45206 ("**Developer**"); and **NASSAU AVENUE INVESTMENTS, LLC**, an Ohio limited liability company ("**Seller**" or "**Co-Developer**" as the context may provide).

Recitals:

A. Seller owns (i) a fee simple interest in certain real property located in the Walnut Hills neighborhood commonly identified as 954 E. McMillan Street, Cincinnati, Ohio 45206 (Hamilton County Parcel ID 067-0003-0007-01) and more particularly described on Exhibit A (Legal Description) hereto (the "**Real Property**") and (ii) a leasehold interest in the Real Property as ground lessor ("**Ground Lessor's Leasehold Interest**") under that certain Ground Lease Agreement by and between Winston Folkers, as ground lessor, and Kroger Co., as ground lessee, dated August 20, 1982, as amended by that certain Ground Lease Amendment, dated January 9, 1984 (collectively, the "**Ground Lease**"). The Real Property is comprised of approximately 3.489 acres of land. Seller is an affiliate of The Model Group, Inc., an Ohio corporation ("**Guarantor**").

B. Developer owns (i) a fee simple interest in the improvements parcel located upon the Real Property and comprised of an approximately 32,000 square-foot former Kroger grocery store and related improvements (the "**Grocery Store Building**") (Hamilton County Parcel ID 067-0003-0007-02) (the "**Improvements Parcel**" and together with the Real Property, the "**Project Site**") and (ii) a leasehold interest in the Real Property and Improvements Parcel as ground lessee under the Ground Lease ("**Ground Lessee's Leasehold Interest**").

C. In order to (i) unify ownership of the Real Property and the Improvements Parcel and (ii) terminate the Ground Lease, Developer intends to acquire the Real Property and Ground Lessor's Leasehold Interest, subject to existing debt obligations, from Seller, then (together with Co-Developer) demolish the Grocery Store Building and install and construct a temporary surface parking lot on the Real Property, all as further described in Exhibit B (Scope of Work and Project Budget) (collectively, the "**Pre-Development Project**"). Following completion of the Pre-Development Project, Developer and Co-Developer will work collaboratively to undertake the full redevelopment of the Project Site in phases (the "**Redevelopment Project**"), as further described in Exhibit B.

D. Section 13 of Article VIII of the Ohio Constitution provides that, in order to create or preserve jobs and employment opportunities, and to improve the economic 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, or not-for-profit corporations designated by them, to acquire, construct, enlarge, improve or equip, and to sell, lease, exchange or otherwise dispose of, property, structures, equipment and facilities for industry, commerce, distribution and research, and to make loans and to provide moneys for the acquisition, construction, enlargement, improvement or equipment of such property, structures, equipment and facilities.

E. The City has determined that providing Developer with the funds to acquire the Real Property for subsequent redevelopment is commercial in nature, that the Pre-Development Project and the Redevelopment Project will create employment opportunities, stimulate economic growth and tourism

in the area, and help to revitalize the Walnut Hills community, and that therefore the Pre-Development Project constitutes a proper public purpose.

F. In furtherance of the foregoing public purpose and upon the terms and conditions set forth in this Agreement, the City desires to lend to Developer a loan in the principal amount of up to \$1,000,000.00 (the "Loan").

G. Pursuant to Ordinance No. [____], passed on [____], Cincinnati City Council declared the Pre-Development Project to serve a public purpose, appropriated funding for the Pre-Development Project, and authorized the execution of this Agreement.

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

1. **Term.** The term of this Agreement shall commence on the Effective Date and shall end on the date on which (i) the entire outstanding balance of the Loan has either been repaid by Developer or has been forgiven in accordance with the Note (as defined below) and (ii) Developer has satisfied all obligations to the City under this Agreement (the "Term").

2. **Due Diligence.**

(A) **Due Diligence Materials.** Prior to the City's disbursement of the Loan, Developer or Co-Developer shall deliver, or cause to be delivered, the following items to the City for its review and approval, all of which shall be in a form and substance acceptable to the City (collectively, "Due Diligence Materials"):

- (i) **Title Commitment:** A commitment of title insurance for the Real Property, for issuance of an owner's policy of title insurance, prepared by a reputable national title insurance company and in such form acceptable to the City (the "Title Commitment");
- (ii) **Environmental Report:** An environmental assessment report for the Real Property, starting with a Phase I assessment and including any additional assessments as may be required by the City's Office of Environment & Sustainability if appropriate, prepared by a qualified environmental professional in a form acceptable to the City;
- (iii) **Purchase Agreement:** Evidence of a valid, executed purchase agreement for acquisition by Developer of the Real Property and Ground Lessor's Leasehold Interest;
- (iv) **Insurance:** Evidence that Developer and Co-Developer have secured all insurance policies required by the Loan Documents (as defined below);
- (v) **Financing:** Evidence that Developer and Co-Developer have secured or will be able to secure all financing necessary to complete the Pre-Development Project; and
- (vi) **Other Information:** Such other information and documents pertaining to Developer, the Pre-Development Project, or the Redevelopment Project as the City may reasonably require.

Once the Due Diligence Materials have been approved by the City, neither Developer nor Co-Developer shall make or permit any changes thereto without the prior written consent of the Director of the City's Department of Community and Economic Development ("DCED"), which consent shall not be unreasonably withheld, conditioned or delayed. The City may, in its sole and absolute discretion, waive

the requirement for delivery of any of the Due Diligence Materials or may permit that any of the Due Diligence Materials be delivered following the Closing (as defined below). Developer shall complete all of its due diligence investigations at no cost to the City.

(B) Right to Terminate Agreement with Respect to Due Diligence Materials. If, prior to the Closing, after exercising good faith efforts, the City or the Developer does not approve of the Due Diligence Materials, the City or Developer may terminate this Agreement by giving written notice thereof to the other party, whereupon neither party shall thereafter have any rights or obligations to the other under this Agreement.

(C) Copies of Due Diligence Materials to be Provided to City. Without limitation of Developer's other obligations under this Agreement, Developer or Co-Developer, at no cost to the City, shall provide DCED with copies of any inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third-party professionals obtained by Developer or Co-Developer prior to Closing that pertain to the Real Property or the Pre-Development Project.

3. Loan Terms and Disbursement Conditions.

(A) Amount of Loan; Eligible Uses. Subject to the terms and conditions of this Agreement, the City agrees to lend the Loan to Developer, and Developer agrees to borrow the Loan from the City. The Loan will be City capital funds and shall not exceed \$1,000,000.00. The proceeds of the Loan shall be used solely (i) to finance the purchase price of the Real Property for acquisition by Developer of the Real Property and (ii) for other related customary closing or acquisition costs approved by the City in writing in advance of the Closing ((i) and (ii) collectively, the "**Eligible Uses**") and for no other purpose. For the avoidance of doubt, Developer shall not use any portion of the Loan to pay for the purchase of inventory, supplies, furniture, trade fixtures, or any other items of personal property, or to establish a working capital fund.

(B) Note & Mortgage. Prior to disbursement of the Loan, Developer shall (i) execute a promissory note in the form of Exhibit C (Form of Promissory Note) hereto (the "**Note**"), and (ii) execute and record a mortgage against the Real Property, in the form of Exhibit D (Form of Mortgage) hereto, in favor of the City (the "**Mortgage**"; this Agreement, the Note, the Mortgage, the Guaranty (as defined below), and any other documents executed by Developer, Co-Developer, or Guarantor to evidence the Loan are referred to herein collectively as the "**Loan Documents**"). Developer shall repay the Loan in accordance with the terms of the Note, and the Note and Mortgage shall be in the full amount of the Loan. If Developer and Co-Developer fail to timely complete any obligations with respect to the Pre-Development Project or Redevelopment Project, as and when required under this Agreement or the Note, the City may declare all amounts of the Loan disbursed by the City to be immediately due and payable and may foreclose on the Developer's interest in the Real Property by enforcing the Mortgage. Upon the earlier of payment in full or forgiveness of the Loan, upon written request by Developer, the City shall prepare and execute a release of the Mortgage, to be recorded at the sole cost of Developer. Notwithstanding the forgoing, the City recognizes and accepts that the Mortgage shall be a second-priority lien on the Real Property, and the City's interests under the Note and Mortgage shall be subordinate to Build Cincinnati Development Fund LLC, an Ohio nonprofit limited liability company (together with its successors and assigns, the "**Senior Lender**"), which holds a first-priority mortgage lien interest in the Real Property pursuant to a \$2,600,000 senior loan ("**Senior Loan**"). Upon request, the City agrees to execute documentation, in such form acceptable to the City, documenting or confirming such subordination to Senior Lender's interest.

(C) Payment and Completion Guaranty. Guarantor owns or controls or is under common ownership as Co-Developer and, therefore, Guarantor will benefit from the Developer's acquisition of the Real Property and Ground Lessor's Leasehold Interest and the completion of the Pre-Development Project and Redevelopment Project; therefore, as a condition of the Loan, Co-Developer shall cause Guarantor to execute a *Payment and Completion Guaranty* substantially in the form of the attached Exhibit E (Form of Payment and Completion Guaranty) ("**Guaranty**").

(D) Conditions for Disbursement of Loan. The City shall disburse the Loan in accordance with Section 3(F) below following satisfaction of all of the following conditions (the “**Disbursement Conditions**”):

- (i) Due Diligence Materials Approval: Approval by the City, in its sole discretion, of all Due Diligence Materials;
- (ii) Loan Documents: Delivery to the City of executed copies of all Loan Documents;
- (iii) Guaranty: Delivery to the City of the fully executed Guaranty, executed by Guarantor;
- (iv) Security Interest: Delivery to the City of evidence satisfactory to the City that Developer has taken all such action, executed and delivered or caused to be executed and delivered all such documents and instruments, including a counterpart of the executed Mortgage, which upon recording in the Hamilton County Recorder’s office will create a valid and perfected second-priority security interest for the City in the Real Property, subordinate only to the Senior Lender’s interest;
- (v) Community Engagement: Evidence that Developer and Co-Developer have engaged the Walnut Hills Area Council regarding the Pre-Development Project and the Loan;
- (vi) Title Insurance Policy: Evidence that the title insurance company is ready to issue a Title Insurance Policy pursuant to the Title Commitment, which was approved by the City;
- (vii) Closing Documentation: Receipt and approval by the City of a copy of the proposed General Warranty Deed from Seller, the proposed settlement statement, and any and all other closing documents pertaining to Developer’s purchase of the Real Property and Ground Lessor’s Leasehold Interest from Seller;
- (viii) Payment Voucher & Wire Instructions: City’s receipt from Developer of a proper payment voucher, in such form as the City will provide to Developer, and wiring instructions for disbursement of the Loan at Closing or otherwise as necessary to close in escrow;
- (ix) No Default: Developer is in full compliance with all requirements under the Loan Documents; and
- (x) Pre-Development Project Completion: Sufficient evidence that the Developer is prepared and capable of otherwise undertaking and completing or causing to be completed all necessary actions to commence the Pre-Development Project promptly following disbursement of the Loan and thereafter to pursue completion of the Pre-Development Project in a timely manner and otherwise in accordance with the terms of this Agreement.

The City may, in its sole and absolute discretion, waive in writing any of the Disbursement Conditions. The City and Developer acknowledge the Developer intends to use the Loan for the acquisition of the Real Property and Ground Lessor’s Leasehold Interest as contemplated by the definition of Eligible Uses, and the City will therefore within 10 business days of the satisfaction of the Disbursement Conditions disburse the Loan in coordination with the title company organizing the Closing and otherwise in accordance with the terms herein.

(E) Closing. After the Effective Date, Developer shall thereafter take all steps necessary to close on the purchase of the Real Property and Ground Lessor’s Leasehold Interest from Seller (the “**Closing**”). The Closing is estimated to take place on or before **October 1, 2020**. At the Closing, the Developer and Co-Developer shall execute all customary closing documents and provide copies to the City. Developer and Co-Developer shall be responsible for all costs of Closing, including but not limited to closing, escrow, and recording fees and any other commercially reasonable costs or expenses necessary to complete transaction contemplated by this Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement shall automatically terminate, and thereafter neither party shall have any

rights or obligations to the other, if for any reason the Closing does not occur by **March 31, 2021**; *provided however*, such timeframe may be extended by the Director of DCED upon written approval of such extension, which written approval shall not be unreasonably withheld, conditioned or delayed.

(F) **Disbursement Procedure.** Provided that all of the Disbursement Conditions have been satisfied in a timely manner, at Closing, the City shall disburse the proceeds of the Loan to Developer, which shall only be utilized for Eligible Uses. The City shall not be required to disburse the proceeds of the Loan to Developer in advance of the Closing and may require that any Loan disbursement be disbursed into escrow for the Closing. If the amount of funds necessary to finance all Eligible Uses is *less than \$1,000,000.00*, the amount of the Loan made available by the City under this Agreement shall be reduced to such lesser amount. In no circumstances shall the City be obligated to disburse proceeds of the Loan in an amount in excess of the proceeds necessary to finance the Eligible Uses.

(G) **No Other City Assistance.** Except for the City's agreement to provide the Loan as described in this Agreement, the City shall not be responsible for any costs associated with the completion of the Pre-Development Project.

4. Pre-Development Project Terms; Redevelopment Project.

(A) **Pre-Development Project Completion.** In accordance with and subject to the terms of this Agreement, Developer shall acquire the Real Property and Ground Lessor's Leasehold Interest from Seller and thereafter, following Closing, the Developer shall diligently pursue the following:

- (i) **Fee-Simple Interest:** Developer shall diligently pursue termination of the Ground Lease and (ii) retirement of the debt secured by Ground Lessee's Leasehold Interest (except for the Existing City Loan (defined below));
- (ii) **Demolition of Grocery Store Building:** Within six (6) months of Closing, subject to extension as provided herein, the Developer shall complete demolition of the Grocery Store Building;
- (iii) **Construction of Pre-Development Project:** Developer shall complete or cause to be completed the construction of the Pre-Development Project, as further described in **Exhibit B**, no later than the **July 1, 2021** (the "**Completion Deadline**"); *provided however*, the City may, upon Developer's request and at the City's sole discretion, extend the Completion Deadline for up to twelve (12) additional months;
- (iv) **Redevelopment Project:** Following completion of the Pre-Development Project, the Developer in conjunction with Co-Developer shall diligently pursue the Redevelopment Project.

(B) **Redevelopment Plans; Budget.** Following the Closing, Developer in conjunction with Co-Developer shall develop building and architectural plans and specifications, as necessary for completion of the first phase of the Redevelopment Project and shall provide a copy of such plans and specifications to the City (the "**Redevelopment Plans**"). Additionally, Developer and Co-Developer shall develop a project budget for completion of the first phase of the Redevelopment Project and shall provide a copy of such budget to the City (the "**Budget**"). Developer and Co-Developer shall provide the Redevelopment Plans and Budget to the City on or before **January 1, 2022**. From time to time, Developer and Co-Developer shall provide updates to the City on the Redevelopment Plans and Budget (together the "**Development Plans**") if Developer and Co-Developer make material changes to such Development Plans. Further, the City agrees to work in good faith with the Developer and Co-Developer on the accommodating financing for the Redevelopment Project, including by potentially executing partial releases of the Mortgage or subordinations as necessary to secure such financing, but only in the City's sole and absolute discretion.

(C) Existing City Loan. Pursuant to a *Loan Agreement* between the City and Developer, dated October 27, 2017, the City loaned to the Developer \$300,000 (the “**Existing City Loan**”) to finance, in part, the acquisition by Developer of Ground Lessee’s Leasehold Interest and the Improvements Parcel. As a further incentive to complete the Redevelopment Project, the City hereby agrees to (i) consent to the termination of Ground Lessee’s Leasehold Interest, as contemplated under Section 4(A)(i) hereof, and will execute any necessary documentation associated with such consent to termination; (ii) forgive the Existing City Loan upon completion of the Pre-Development Project in accordance with the terms of this Agreement; and (iii) to the extent required, execute such amendments of the documents securing the Existing City Loan to incorporate the agreements set forth herein. Upon the request of Developer upon completion of the Pre-Development Project and so long as Developer is not in default of its obligations under this Agreement, then the City agrees to forgive the Existing City Loan, release any and all collateral interests securing such Existing City Loan, and to execute documentation in such form acceptable to the City necessary to effectuate such forgiveness.

(D) Applicable Laws. Developer shall obtain and maintain all necessary City and other governmental permits, licenses and other approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to the Pre-Development Project, Redevelopment Project and the Real Property including without limitation those set forth on Exhibit F (Additional City Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits or other approvals from the City’s Department of Buildings and Inspections, the Department of City Planning, City Planning Commission, or City Council that may be required in connection with the Pre-Development Project.

(E) Insurance Requirements. Throughout the Term, Developer shall maintain the following insurance policies:

- (i) special peril (formerly known as “all-risk”) full replacement cost property insurance on the Real Property, naming the City and Developer as their interests may appear;
- (ii) liability insurance covering claims for bodily injury, personal injury or death, and property damage occurring at the Real Property in an amount of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured with respect to the Pre-Development Project; and
- (iii) workers’ compensation insurance as required by law.

(F) 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, 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 (and shall cause its general contractor’s insurance policies) to include a waiver of subrogation provision consistent with the foregoing waiver.

(G) 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 Real 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 generated in connection with this Agreement, Developer shall: (i) at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City’s Office of Environmental Quality; 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 actually 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 Developer's completion of the Pre-Development Project.

(H) **General Indemnity.** Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer or Co-Developer, as applicable, shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation reasonable attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Developer or Co-Developer, as applicable, the general contractor, or their respective agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Developer, Co-Developer or general contractor in connection with the Pre-Development Project.

5. Reserved.

6. Casualty; Eminent Domain. If, during the Term of this Agreement, the improvements on the Real Property are damaged or destroyed by fire or other casualty, or if any portion of the Real Property is taken by exercise of eminent domain (federal, state or local), Developer shall cause the Real Property to be repaired and restored, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Real Property was in immediately prior to such occurrence. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including without limitation obtaining the City's approval of the plans and specifications if they deviate from the final plans and specifications as initially approved by the City hereunder. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the affected property is being repaired or restored.

7. Default; Remedies.

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

(i) The dissolution of any of the entities comprising Developer, Co-Developer or Guarantor (during the term of the Guaranty) or the filing of any bankruptcy or insolvency proceedings by or against any of them, the appointment of a receiver (temporary or permanent) for any of them, the attachment of, levy upon, or seizure by legal process of any property of any of them, or the insolvency of any of them; or

(ii) The failure of Developer, Co-Developer or Guarantor (during the term of the Guaranty) to perform or observe any obligation, duty, or responsibility under this Agreement or any other Loan Document (*provided that* a failure of the Guarantor to perform under the Guaranty shall be deemed a failure of Developer to perform under this Agreement) and (a) if such failure is reasonably susceptible to being cured within thirty (30) days, Developer or Co-Developer fails to cure such failure within thirty (30) days of Developer and Co-Developer receiving written notice of such failure from the City; or (b) if such failure is not reasonably susceptible to being cured within such 30 day period, Developer or Co-Developer fails (i) to commence to cure such failure within such 30 day period or (ii) thereafter fails to diligently pursue such cure to completion and actually complete such cure within ninety (90) days of Developer and Co-Developer receiving written notice of such failure from the City; or (c) if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, Developer or Co-Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency. The foregoing notwithstanding, if Developer's or Co-Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Developer or Co-Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency.

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) terminate this Agreement by giving Developer and Co-Developer 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 default, all at the expense of Developer and Co-Developer; (iii) require repayment of any and all of the Loan previously disbursed by the City to Developer under this Agreement; and (iv) exercise any and all other rights and remedies under this Agreement, under the Note, Mortgage, or Guaranty or otherwise available at law or in equity, including without limitation pursuing an action for specific performance, all such rights and remedies being cumulative. Developer and Co-Developer shall be liable for all costs and damages, including without limitation reasonable attorneys fees, suffered or incurred by the City as a result of a default of Developer or Co-Developer 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 shall not constitute a waiver of the breach of such covenant or of such remedy. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the City be obligated to disburse the Loan to Developer if Developer or Co-Developer is then in default under this Agreement.

(C) Notices. All notices given by the parties hereunder shall be deemed given if personally delivered, delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses set forth in the introductory paragraph of this Agreement. Notices shall be deemed given on the date of receipt. If Developer or Co-Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer or Co-Developer shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214 Cincinnati, OH 45202.

(D) Representations, Warranties and Covenants of Developer. Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Developer is a nonprofit limited liability company, organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

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

(iii) Developer's execution, delivery and performance of this Agreement and 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, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, at law or in equity or before or by any governmental authority.

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

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

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

(viii) Developer shall fully comply with any and all relevant relocation laws that may be applicable to Developer's activities under the Agreement including, but not limited to, Cincinnati Municipal Code Chapter 740.

(E) Representations, Warranties and Covenants of Co-Developer. Co-Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Co-Developer is a limited liability company, organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

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

(iii) Co-Developer's execution, delivery and performance of this Agreement and 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 Co-Developer, or any mortgage, contract, agreement or other undertaking to which Co-Developer is a party or which purports to be binding upon Co-Developer or upon any of its assets, nor is Co-Developer in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Co-Developer, threatened against or affecting Co-Developer, at law or in equity or before or by any governmental authority.

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

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

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

(viii) Co-Developer shall fully comply with any and all relevant relocation laws that may be applicable to Co-Developer's activities under the Agreement including, but not limited to, Cincinnati Municipal Code Chapter 740.

8. Reporting Requirements.

(A) Submission of Records and Reports; Records Retention. Developer and Co-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

reasonably requested by the City pertaining to Developer, Co-Developer, the Pre-Development Project, the Redevelopment Project, or this Agreement, including without limitation financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Pre-Development Project or Redevelopment 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**"). If at any time the City deems it necessary to review audited financial statements, Developer or Co-Developer, as applicable, shall furnish the same to the City upon the City's written request (not more than once per year). All Records and Reports compiled by Developer or Co-Developer and furnished to the City shall be in such form as the City may from time to time require. Developer and Co-Developer shall retain all Records and Reports for a period of three (3) years after completion of the Pre-Development Project and Redevelopment Project.

(B) City's Right to Inspect and Audit. For a period of three (3) years after the Term, Developer and Co-Developer shall permit the City and its designees and auditors to have reasonable access to and to inspect and audit Developer's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer or Co-Developer to the City, Developer or Co-Developer, as applicable, shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

9. Recognition of City Funding. Developer shall acknowledge the financial support of the City with respect to the Pre-Development Project in all printed materials such as informational releases, pamphlets and brochures, construction signs, project and identification signage, and any publicity such as that appearing on the Internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a funder, Developer shall use either the phrase "Funding provided by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City. Developer's obligations under this section shall commence on the Effective Date and shall terminate on the date of completion of the Pre-Development Project.

10. General Provisions.

(A) Assignment.

(i) Assignment. Developer and Co-Developer shall not assign their respective rights or interests under this Agreement to any third party without the prior written consent of the City, which consent may be withheld in the City's sole discretion. The City hereby consents to Developer's and/or Co-Developer's collateral assignment of their respective rights under this Agreement to any construction lender(s) for the Pre-Development Project or Redevelopment Project and to an assignment of Developer's and/or Co-Developer's rights under this Agreement to any affiliate of Developer for purposes of completing the Pre-Development Project or Redevelopment Project. Any such permitted assignment shall not act as a release of Developer or Co-Developer, unless otherwise agreed to in writing by the City, and any prohibited assignment shall be void.

(ii) Land Banking. The Developer may seek to landbank the Real Property with the Hamilton County Land Reutilization Corporation in order to reduce expenses prior to undertaking the Pre-Development Project and Redevelopment Project. Prior to any such transfer of the Real Property to another entity for landbanking, the Developer shall have received the City's written approval of such transaction, which approval shall not be unreasonably withheld, conditioned, or delayed, and the City shall have approved the terms of such transfer, in its reasonable discretion. The obligations of Developer under this Agreement, under the Note, and the lien of the Mortgage shall not be in anyway negated or otherwise negatively impacted by any such arrangement.

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

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

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Developer agrees that venue in such court is proper. Developer hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and assigns. Except as set forth in Section 10(A) hereof, Developer and Co-Developer shall not assign their respective rights or obligations under this Agreement without the prior written consent of the City, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

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

(I) No Brokers. The City and Developer represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of Developer's acquisition of the Real Property (or, if Seller is represented by a real estate broker or agent, Developer's purchase contract with Seller shall require Seller to pay any and all real estate commissions and fees owed to such broker pursuant to the separate agency agreement between them).

(J) 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.

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

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

(M) Joint and Several. Except where only one entity is referenced regarding an obligation, the obligations and liability of Developer and Co-Developer under this Agreement are joint and several. In dealing with said entities, the City shall be entitled to rely upon information, notices, documents and the like received by the City from only one of said entities to the same extent as if the same had been provided to the City by both entities.

- (N) Exhibits. The following Exhibits are attached hereto and made a part hereof:
- Exhibit A – *Legal Description*
 - Exhibit B – *Scope of Work and Project Budget*
 - Exhibit C – *Form of Promissory Note*
 - Exhibit D – *Form of Mortgage*
 - Exhibit E – *Form of Payment and Completion Guaranty*
 - Exhibit F – *Additional City Requirements*

Remainder of this page intentionally left blank. Signatures to follow.

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

WHRF HOLDINGS III, LLC

By: _____

Title: _____

Date: _____, 2020

NASSAU AVENUE INVESTMENTS, LLC

By: _____

Title: _____

Date: _____, 2020

[CITY SIGNATURE PAGE ATTACHED]

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

Recommended by:

Markiea Carter
Interim Director, Department of Community and Economic Development

Approved By:

Jennifer Mackenzie
Interim Director, Department of Economic Inclusion

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to Funding Agreement

LEGAL DESCRIPTION

[TO BE INSERTED IN EXECUTION VERSION]

EXHIBIT B
to Funding Agreement

SCOPE OF WORK AND PROJECT BUDGET

I. SCOPE OF WORK FOR PRE-DEVELOPMENT PROJECT – Acquisition of the Real Property and Ground Lessor’s Leasehold Interest and Development of the Real Property

Within the required timeframes and in compliance with the terms of this Agreement, the Developer shall complete the Pre-Development Project, which consists of the following:

- (a) Acquisition of the Real Property and Ground Lessor’s Leasehold Interest:** Developer will complete all due diligence activities and acquire the Real Property and Ground Lessor’s Leasehold Interest.
- (b) Demolition of Grocery Store Building:** Developer will complete the demolition and removal of the Grocery Store Building, including full removal of the underlying slab and any and all subsurface structures that are part of the Grocery Store Building.
- (c) Development and Operation of Temporary Parking Lot:** Following completion of demolition, the Developer shall develop the Real Property as an approximately 120-space temporary surface parking lot in order to provide public parking and otherwise support the economic vitality of the Walnut Hills Business District and its use by the Walnut Hills Community and the region as a whole. As part of the development of the parking lot, the Developer shall ensure that (i) there are no remaining portions of the Grocery Store Building or other improvements that will be an eyesore or visual detriment to the Walnut Hills business district; (ii) that the site is graded appropriately following the demolition; (iii) that adequate improvements and erosion control measures are made to ensure that the site remains safe, clean, and presentable; and (iv) that appropriate fencing is utilized where necessary to clearly designate the parking areas from any areas closed to the public and ensure safety for those utilizing the lot. The parking lot use shall be temporary and only in place until the Redevelopment Project commences. Developer shall keep the parking lot and all other improvements on the site in good condition and repair and free from debris and trash until the Redevelopment Project occurs and shall ensure that improvements thereon do not cause safety hazards or attract criminal activity.

II. PRE-DEVELOPMENT PROJECT BUDGET

Sources

BCDF Loan	\$ 2,600,000
City Loan	\$ 1,000,000
Haile Foundation	\$ 700,000
Owner Equity	\$ 250,000
Total	\$ 4,550,000

Uses

Land Acquisition	\$ 2,650,000
Haile Foundation Repayment	\$ 700,000
CDF Repayment	\$ 500,000
LISC Repayment	\$ 100,000
Improved Lighting	\$ 115,000
Security Fencing	\$ 25,000
Demolition	\$ 175,000

Paving Repairs	\$ 90,000
Striping	\$ 45,000
Loan Interest	\$ 100,000
Closing Costs	\$ 50,000
Total	\$ 4,550,000

III. REDEVELOPMENT PROJECT

- (a) **Plans and Budget:** In accordance with Section 4(B), Developer shall deliver to the City for the Redevelopment Plans and Budget.
- (b) **Redevelopment Project Description:** The Redevelopment Project will consist of multiple phases, but upon completion of all phases of construction, the Redevelopment Project will include approximately \$75,000,000 to \$100,000,000 worth of improvements, consisting primarily of residential apartments with at least 30% of the units being affordable, as well as other related improvements such as first floor retail and/or office space, common areas, public improvements, and parking.
- (c) **Timing:** Developer and Co-Developer shall use best efforts to commence construction of the first phase of the Redevelopment Project, which will include improvements with hard and soft construction costs of \$10,000,000 or more, by **September 1, 2022**.

EXHIBIT C
to Funding Agreement

FORM OF PROMISSORY NOTE

PROMISSORY NOTE

(secured by mortgage on real property, 1% interest rate)

\$1,000,000.00

Cincinnati, Ohio

_____, 2020

FOR VALUE RECEIVED, the undersigned, **WHRF HOLDINGS III, LLC**, a nonprofit limited liability company under the laws of the State of Ohio, the address of which is 656 E. McMillan Street, Cincinnati, Ohio 45206 ("**Borrower**" or "**Developer**," as the context may provide), hereby promises to pay to the order of the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), the sum of one million dollars and 00/100 (**\$1,000,000.00**) or so much thereof as the City disburses to Borrower pursuant to that certain *Funding Agreement* between the City and Borrower dated _____, 2020, (the "**Agreement**"), as described below (the "**Loan**"). Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Agreement.

This Promissory Note is secured by a second-priority mortgage on real property located at 954 E. McMillan Street, Cincinnati Ohio, 45206 (the "**Real Property**"). As more particularly described in the Agreement, Borrower is required to use the Loan proceeds exclusively to pay the purchase price of the Real Property and additional acquisition-related costs as approved in writing by the City.

1. Terms. The terms of the Loan are as follows:

(a) **Term.** The term of the Loan (the "**Term**") shall be 7 years, beginning upon the date of this Promissory Note (the "**Effective Date**") and ending on the 7-year anniversary thereof (the "**Maturity Date**"); *provided however*, in the event that on or before the Maturity Date (i) Developer and Co-Developer commence construction by September 1, 2022 ("**Commencement Date**") on the first phase of the Redevelopment Project, in accordance with the Agreement; (ii) such first phase of the Redevelopment Project has a total hard and soft cost of construction equal to or exceeding \$10 million; and (iii) Borrower is then in and has continually been in compliance with all requirements of the Agreement, then the Maturity Date shall be automatically be extended to be the 15-year anniversary of the Effective Date, for a total Term that is 15 years. The Commencement Date may be extended by the Director of DCED upon written approval of such extension.

(b) **Interest Rate.** Interest shall accrue at a rate of one percent (1.00%) per annum on the outstanding principal amount of the Loan.

(c) **Loan Repayment; Deferral; Forgiveness.** The Loan is an interest-only forgivable loan with all principal payments deferred until the Maturity Date. As material consideration for the City's agreement to make the Loan to Borrower, Borrower represents and warrants to the City that Borrower presently intends to complete the Pre-Development Project and Redevelopment Project in accordance with the terms of the Agreement. The Loan shall be repaid by Borrower (or the Guarantor in accordance with the Guaranty) in accordance with the following:

[i] **Interest-only Period:** Commencing on the [i] first anniversary of the Effective Date and continuing annually on each anniversary of the Effective Date (each an "**Interest-Only Payment Date**") until the Maturity Date, Borrower shall pay to the City an interest-only

payment, in arrears, equal to all interest accrued on the outstanding and unforgiven principal amount of the Loan, due and payable on such Interest-Only Payment Date (each an "Interest Payment"). Notwithstanding the forgoing, if revenue generated from the Real Property and operations thereon is not sufficient to cover an Interest Payment on a given Interest-Only Payment Date after Borrower accounts for (i) all payments owed to Senior Lender under the Senior Loan and (ii) reasonably necessary expenses for operating the Real Property, then such Interest Payment or such portion of Interest Payment for which there is insufficient revenue may be deferred by Borrower until the subsequent Interest-Only Payment Date. If Borrower elects such deferral, then Borrower shall provide to the City acceptable documentation evidencing such revenue and expenses justifying the requested deferral.

[ii] Principal Forgiveness:

(A) Upon completion of the Pre-Development Project, so long as Borrower is then in and has continually been in compliance with all requirements of the Agreement, then the City agrees to forgive \$700,000 of the outstanding principal amount of the Loan. Upon request by Borrower, the City will provide written confirmation of such compliance and forgiveness.

(B) If on or before the Maturity Date (i) Developer and/or Co-Developer commence construction by the Commencement Date on the first phase of the Redevelopment Project in accordance with the Agreement; (ii) such first phase of the Redevelopment Project has a total hard and soft cost of construction equal to or exceeding \$10 million; and (iii) Borrower is then in and has continually been in compliance with all requirements of the Agreement, then the City agrees to forgive the remaining outstanding principal amount and all other amounts then due on the Loan. Upon request by Borrower, the City will provide written confirmation of such compliance and forgiveness.

[iii] Balloon Payment: On the Maturity Date, the Borrower shall pay a balloon payment equal to all unpaid and unforgiven principal, interest, and other charges outstanding on the Loan.

(d) Prepayment. Borrower may prepay the Loan at any time, without penalty.

(e) Late Charges & Default Rate of Interest. If any payment due hereunder is not received by the City when due, a late charge equal to five percent (5%) of the past due amount shall automatically become due, and interest on the past due amount shall accrue at the rate of twelve percent (12%) per annum beginning on the due date until the entire past due amount has been paid. The foregoing is in addition to the City's other rights and remedies hereunder and under the Agreement in the event of a default.

(f) Subordination. This Note is subject and subordinate in all respects to that certain construction loan made by Build Cincinnati Development Fund LLC, an Ohio nonprofit limited liability company, to Borrower in the maximum principal amount of \$2,600,000 and any refinancing of the Senior Loan.

2. Authority. The officer or representative of Borrower subscribing below represents that s/he has full power, authority and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower.

3. Place of Payment. Payments due under this Note shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to the City at the address set forth in the introductory paragraph of this Note or such other place as the City may designate in writing from time to time.

4. Due on Sale. If Borrower sells or otherwise transfers title to the Real Property to a third party without the prior written consent of the City, then the entire principal balance and all accrued interest

under this Note shall automatically become due and payable.

5. Default; Remedies. Upon any default in the payment of interest, principal, or any other sum when due under this Note that is not cured within five (5) days after Borrower receives written notice thereof, or upon a default of Borrower under the Agreement that is not cured within the applicable notice and cure period provided for therein, the entire principal sum and any and all late charges and accrued and unpaid interest under this Note may, at the option of the Note holder, be declared to be immediately due and payable, time being of the essence. Failure of the holder of this Note to exercise its rights and remedies in the event of default shall not constitute a waiver of the right of the holder to exercise the same in the event of a subsequent default.

6. General Provisions. This Note and any and all ancillary documents executed by Borrower in connection with the Loan constitute the entire agreement of the parties with respect to the matters described herein and supersede any and all prior communications and agreements between the parties. This Note may be amended only by a written amendment signed by Borrower and the Note holder. This Note shall be governed by the laws of the City of Cincinnati and the State of Ohio. This Note shall be binding upon Borrower and its successors and assigns. If any provision of this Note is determined to be in violation of any applicable local, state or federal law, such provision shall be severed from this Note and the remainder of this Note shall remain in full force and effect. All notices given under this Note shall be sent by regular or certified U.S. mail to Borrower at its address set forth below and to the Note holder at the address where loan payments are made. Any action or proceeding arising under this Note shall be brought only in the Hamilton County Court of Common Pleas. Presentment, notice of dishonor, protest and notice of protest are hereby waived.

[SIGNATURE PAGE FOLLOWS]

Executed by Borrower on the Effective Date.

BORROWER:

WHRF HOLDINGS III, LLC
an Ohio nonprofit limited liability company

By: _____

Printed name: _____

Title: _____

Approved as to Form:

Assistant City Solicitor

EXHIBIT D
to Funding Agreement
FORM OF MORTGAGE

[SPACE ABOVE FOR RECORDER'S USE]

Property: 954 E. McMillan Street

MORTGAGE

The undersigned, **WHRF HOLDINGS III, LLC**, an Ohio nonprofit limited liability company ("**Borrower**"), in consideration of a loan in the principal amount of \$1,000,000.00 made by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), as evidenced by Borrower's *Promissory Note* dated _____, 2020, (as the same may be amended, restated or replaced from time to time, the "**Note**"), hereby grants, with mortgage covenants (subject to prior matters of record, including without limitation all documentation evidencing and/or securing the first-priority mortgage lien in favor of Build Cincinnati Development Fund LLC, an Ohio nonprofit limited liability company, to which this Mortgage is expressly subordinate), to the City the real property described pursuant to the legal description set forth below (the "**Property**"):

Parcel Number: 067-0003-0007-01
Property Address: 954 E. McMillan Street, Cincinnati Ohio, 45206
Deed Reference: OR _____, Page _____, Hamilton County, Ohio Records.
Legal Description: See attached *Exhibit A*

This Mortgage is given, upon the statutory condition, to secure the Borrower's obligations to make payments under the Note.

Executed on the date of acknowledgement indicated below.

[SIGNATURE PAGE FOLLOWS]

WHRF HOLDINGS III, LLC

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2020, by _____, the _____ of WHRF HOLDINGS III, LLC, a nonprofit limited liability company organized under the laws of the State of Ohio, on behalf of the corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

EXHIBIT A
to Mortgage

Legal Description

[DESCRIPTION TO BE INSERTED IN EXECUTION VERSION]

EXHIBIT E

to Funding Agreement

FORM OF PAYMENT AND COMPLETION GUARANTY

Project: Walnut Hills Kroger Redevelopment

PAYMENT AND COMPLETION GUARANTY

This Payment and Completion Guaranty ("**Guaranty**") is made as of the Effective Date (as defined on the signature page hereof) by **THE MODEL GROUP, INC.**, an Ohio corporation, the address of which is 1826 Race St, Cincinnati, OH 45202 ("**Guarantor**") in favor of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**").

Recitals:

A. The City; WHRF Holdings III, LLC, an Ohio nonprofit limited liability company ("**WHRF**"); and Nassau Avenue Investments, LLC, an Ohio limited liability company ("**Nassau**" and collectively with WHRF the "**Obligor**") are parties to a *Funding Agreement* dated _____ (the "**Agreement**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Agreement.

B. Pursuant to the Agreement, among other things, Obligor is obligated to complete the Pre-Development Project, which includes the acquisition of 954 E. McMillan Street in order to demolish the existing structures, develop a temporary parking lot, and create a fee simple interest in the parcel so that the Redevelopment Project can occur. Pursuant to the terms of the Agreement, the City is providing the Loan in the amount of \$1,000,000.00 in order to partially finance the acquisition of the Real Property.

C. Guarantor owns or controls or is under common ownership with Nassau and is partnering with WHRF in the Pre-Development Project and the Redevelopment Project and will benefit from the provision of the Loan provided by the City.

D. It is a condition of the Agreement that Guarantor provide this Guaranty to the City with respect to the Pre-Development Project.

NOW, THEREFORE, for and in consideration of the City's execution of the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby promises and agrees as follows:

1. Guaranty.

(A) Guarantor hereby absolutely, unconditionally, and irrevocably guarantees to the City the full and prompt performance by Obligor of Obligor's obligations under the Agreement to both (i) complete the Pre-Development Project and (ii) repay the Loan, all in accordance with, and subject to, the terms and conditions of the Agreement and the Note, including payment to the City of any and all losses, damages, and expenses (including without limitation reasonable attorneys' fees) suffered or incurred by the City and arising out of the failure by Obligor under the Agreement to do so, regardless of whether such losses, damages, or expenses are expressly provided for under the Agreement or are then otherwise allowable by law (collectively, the "**Guaranteed Obligations**").

(B) If Obligor fails to fulfill one or more of the Guaranteed Obligations, resulting in a notice of default from the City to Obligor under the Agreement, the City shall notify Guarantor thereof in writing. If the City provides notice of default, then Guarantor, within sixty (60) days after its receipt of such notice, shall take all steps necessary to cure the default (including, for example, providing additional funding for

the Pre-Development Project if necessary). All rights and remedies of the City under this Guaranty are cumulative, and nothing in this Guaranty shall be construed as limiting the City's rights and remedies available under the Agreement or at law or in equity.

(C) From time to time, the City may in the exercise of its sole and absolute discretion and without providing notice to or obtaining the consent of Guarantor, and without in any way releasing, altering, or impairing any of Guarantor's obligations and liabilities to the City under this Guaranty: (i) waive compliance with, or any default occurring under, or grant any other indulgence with respect to, the Agreement; (ii) modify or supplement any of the provisions of the Agreement upon written agreement with Obligor; (iii) grant any extension or renewal of or with respect to the Agreement upon written agreement with Obligor and/or effect any release, compromise, or settlement in connection therewith; and (iv) deal in all respects with Obligor as if this Guaranty were not in effect.

2. Liability of Guarantor.

(A) Guarantor's liability under this Guaranty (i) shall be primary, direct, and immediate and is a guaranty of performance and completion and of collection on the Loan; (ii) shall not be conditioned or contingent upon the pursuit by Obligor of any remedy that it may have against its contractors, subcontractors, or any other person with respect to the Pre-Development Project or at law or in equity; and (iii) shall be unconditional, irrespective of the genuineness, validity, regularity, or enforceability of the Agreement, as the case may be, or of the adequacy of any consideration or security given therefor or in connection therewith, or of any other circumstance that might otherwise constitute a legal or equitable discharge of a surety or a guarantor under applicable law. Guarantor hereby waives any and all defenses at law or in equity that may be available to Guarantor by virtue of any such circumstance.

(B) Without limiting the generality of the foregoing provisions of this Section 2, the City shall not be required (i) to make any demand of Obligor or any other person; or (ii) otherwise pursue or exhaust its remedies against Obligor or any other person or entity or against the Pre-Development Project, before, simultaneously with, or after enforcing any of its rights and remedies under this Guaranty against Guarantor. The City may bring one or more successive and/or concurrent actions against Guarantor, either as part of any action brought against Obligor or in one or more separate actions, as often as the City deems advisable in the exercise of its sole and absolute discretion.

(C) Guarantor's liability under this Guaranty shall continue after any assignment or transfer by the City or Obligor of any of their respective rights or interests under the Agreement or with respect to the Pre-Development Project until the satisfaction of all provisions contained in this Guaranty (but the foregoing shall not be deemed to be or constitute the consent by the City to any such assignment by Obligor, which shall continue to be governed by the terms of the Agreement). Guarantor's liability under this Guaranty shall not be affected by any bankruptcy, reorganization or insolvency of Obligor or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Obligor.

(D) Waivers. Guarantor hereby expressly waives: (i) presentment and demand for payment of any sum payable under the provisions of the Agreement, and protest of any nonpayment thereof; (ii) notice of acceptance of this Guaranty and of such presentment, demand and protest; (iii) notice of any default under this Guaranty or under the provisions of the Agreement, except as stated herein; (iv) demand for observance or performance, and enforcement, of any of the terms or conditions of this Guaranty, and/or of the Agreement, except as stated herein; (v) any and all other notices and demands that may otherwise be required by law to be given or made; and (vi) any and all rights that Guarantor may have to a trial by jury in any action brought on or with respect to this Guaranty, all rights and remedies accorded by applicable law to Guarantor, including, without limitation, any extension of time conferred by any law now or hereafter in effect, and all rights of redemption, homestead, dower and other rights or exemptions of every kind, whether common law or statutory. In addition, Guarantor hereby expressly agrees that, if this Guaranty is enforced by suit or otherwise, or if the City exercises any of its rights or remedies under the provisions of the Agreement upon any default by Obligor in performing any of Obligor's obligations thereunder, Guarantor shall reimburse the City, upon demand, for any and all

expenses, including without limitation reasonable attorneys' fees, that the City incurs in connection therewith, payable within sixty (60) days after the City's written demand.

3. Subrogation. No payment by Guarantor under this Guaranty shall give Guarantor any right of subrogation to any rights or remedies of the City against Obligor under the Agreement. Until Obligor has paid and performed all of its obligations under the Agreement, Guarantor hereby waives all rights of contribution, indemnity or subrogation with respect to Obligor that might otherwise arise from Guarantor's performance under this Guaranty.

4. Effect of this Guaranty. Guarantor hereby warrants to the City that: (A) Guarantor (i) has a financial interest in the Pre-Development Project; (ii) is duly organized, validly existing, and in good standing under the laws of the State of Ohio; (iii) has full power, authority, and legal right to execute, acknowledge, and deliver this Guaranty; and (iv) there are no actions, suits, or proceedings pending or to the knowledge of Guarantor threatened against Guarantor, at law or in equity, or before any governmental department, commission, board, bureau, agency, or instrumentality which involve the possibility of any judgment or order that may result in any material adverse effect upon Guarantor; and (B) this Guaranty constitutes Guarantor's binding and enforceable legal obligation.

5. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person; (ii) upon receipt or refusal if delivered by overnight delivery with any reputable overnight courier service; or (iii) upon receipt or refusal if sent by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to Guarantor and the City, as the case may be, at the addresses set forth in the introductory paragraph of this Guaranty or such other address as may be designated from time to time by notice given to the other party in the manner prescribed herein. Guarantor shall simultaneously send, by U.S. certified mail, a copy of each notice given by Guarantor to the City hereunder to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

6. General Provisions.

(A) Amendment. This Guaranty may be amended or supplemented by, and only by, an instrument executed by the City and Guarantor.

(B) Waiver. Neither party hereto shall be deemed to have waived the exercise of any right which it holds under this Guaranty unless that waiver is made expressly and in writing (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

(C) Applicable Law. This instrument shall be given effect and construed by application of the laws of the City of Cincinnati and the State of Ohio, and any action or proceeding arising under this Guaranty shall be brought only in the Hamilton County Court of Common Pleas. Guarantor hereto agrees that the City shall have the right to join Obligor in any action or proceeding commenced by the City under this Guaranty.

(D) Time of Essence. Time shall be of the essence of this Guaranty.

(E) Headings. The headings of the paragraphs and subparagraphs of this Guaranty are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

(F) Construction. As used in this Guaranty, (i) the term "person" means a natural person, a trustee, a corporation, a partnership, a limited liability company, and any other form of legal entity; and (ii) all references made (a) in the neuter, masculine, or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to any paragraph or subparagraph shall, unless herein expressly indicated to the contrary, be deemed to have been made to such paragraph or subparagraph of

this Guaranty, and (d) to Guarantor, the City, and Obligor shall be deemed to refer to each person hereinabove so named and their respective heirs, executors, personal representatives, successors and assigns.

(G) Severability. No determination by any court or governmental body that any provision of this Guaranty or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other such provision, or (ii) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with applicable law.

(H) Entire Agreement. This Guaranty represents the complete understanding between or among the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, statements or agreements, either written or oral, between or among the parties hereto as to the same.

(I) Term. This Guaranty shall be effective upon the execution hereof and shall remain in effect until such time as the Guaranteed Obligations are satisfied and discharged in full. At such time, Guarantor may request, and the City will endeavor to promptly provide, a written statement from the City acknowledging the same and confirming that Guarantor has no further obligations hereunder.

(J) Assignment. Guarantor shall not assign its rights or interests or delegate its duties or obligations under this Guaranty to any third party without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. Any non-permitted assignment shall be void.

[Signature Page Follows]

Executed and effective as of _____, 2020 (the "Effective Date").

GUARANTOR:

THE MODEL GROUP, INC.

By: _____

Name: _____

Title: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

Office of the City Solicitor
801 Plum Street, Room 214
Cincinnati, Ohio 45202

EXHIBIT F

to Funding Agreement

ADDITIONAL CITY REQUIREMENTS

Developer, Co-Developer, and their 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 and Co-Developer hereby acknowledge and agree that (a) the below listing of Government Requirements is not intended to be an exhaustive list of Government Requirements applicable to the Pre-Development Project, Redevelopment Project, Developer, Co-Developer, or their 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. For the purposes of this Exhibit the term "**Project**" shall mean the Pre-Development Project.

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if

Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "Construction Workforce Goals").

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering 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.¹

(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

¹ 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.

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

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

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

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

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 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 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

[WAGE DETERMINATION TO BE ATTACHED TO EXECUTION VERSION]