

Contract No. _____

PROPERTY SALE AND DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI

and

OAKLEY CROSSINGS HOLDINGS, LLC

Project Name: Crossings of Oakley

(sale of City-owned real property for consolidation with real property at
3628-3646 Madison Road and construction of
approximately 16,200 square feet of commercial retail space)

Dated: _____, 2022

PROPERTY SALE AND DEVELOPMENT AGREEMENT

This Property Sale and Development Agreement (this “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (the “**Developer**”), an affiliate of Morelia Group, LLC.

Recitals:

A. Developer owns certain real property located at 3628-3646 Madison Road, consisting of approximately 2.6588 acres of real property in the Oakley neighborhood of Cincinnati, as the same is shown on Exhibit A (Site Plan) hereto (the “**Developer Property**”).

B. The City owns certain real property directly adjacent to the Developer Property, consisting of approximately 0.0617 acres in the Oakley neighborhood of Cincinnati, which property is more particularly described and depicted on Exhibit B-1 (Legal Description – Sale Property) and Exhibit B-2 (Survey Plat – Sale Property) hereto (the “**Sale Property**”; and collectively with the Developer Property, the “**Property**” or the “**Project Site**”, as applicable), which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

C. Developer desires to purchase the Sale Property for consolidation with the Developer Property to facilitate the design and construction of approximately 16,200 square feet of commercial retail space, at an estimated total project cost of approximately \$9,100,000, all as more particularly described on Exhibit C (Statement of Work, Budget, and Sources of Funds) hereto (the “**Project**”).

D. In connection with the construction of the Project, Developer intends to dedicate as public right-of-way forever property that is approximately 0.0847 acres along Madison Road, as shown on Exhibit D (Dedication Plat) hereto (together with the Remainder Property (as defined below), the “**Dedication Property**”).

E. Developer currently anticipates that it will (i) commence on-site construction of the Project no later than the date that is 3 months after the Closing Date (as defined below) (the “**Project Commencement Date**”), and (ii) complete construction of the Project no later than the date that is 24 months after commencing on-site construction of the Project (the “**Project Completion Date**”).

F. The City’s Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Sale Property is \$53,750.

G. To facilitate the Project and promote its economic feasibility, the City is agreeable to (i) selling the Sale Property to Developer for less than fair market value; namely, for \$1.00, because the City will receive economic and non-economic benefits exceeding such fair market value in connection with the Project, including (a) the benefit of the Dedication Property being dedicated for use by the general public, and (b) the creation of jobs and the urban redevelopment of Oakley; and (ii) cooperating to facilitate a real property tax abatement for a portion of the Project pursuant to a *Community Reinvestment Area Tax Exemption Agreement* (“**CRA Agreement**”), subject to passage by City Council of a separate ordinance authorizing such abatement.

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

I. The City has determined that (i) in consultation with the Department of Community and Economic Development (“**DCED**”) and DOTE, the Sale Property is not needed for municipal purposes; and (ii) it is in the best interest of the City to eliminate competitive bidding in connection with the City’s sale of the Sale Property to Developer because the Sale Property is necessary in order for Developer to undertake the Project.

J. The City, upon the recommendation of DCED, believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements and for this reason the City desires to facilitate the Project by entering into this Agreement.

K. The City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property at its meeting on December 17, 2021.

L. Execution of this Agreement was authorized by Ordinance No. ____-2022, passed by City Council on _____, 2022.

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

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

2. Closing and Conditions to Closing.

(A) **Conditions.** The Closing on the City’s sale of the Sale Property to Developer (the “**Closing**”) shall not occur unless each of the following conditions has been satisfied, including any and all other conditions as may be identified in the City’s Coordinated Reports #CR27-2021 and #81-2021, including those conditions outlined in Section 11 below (collectively, the “**Conditions**”); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City’s Deed (as defined below) or handle such Conditions post-Closing. Developer shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) *Due Diligence Investigations:* Developer’s approval of its due diligence inspections with respect to the Sale Property, including, without limitation, title, survey, and environmental assessments of the Sale Property;
- (ii) *Scope and Budget:* Developer shall have provided to the City a detailed and updated scope and budget for the Project;
- (iii) *Sale Plats and Legal Descriptions:* The parties’ approval of all required sale plats, surveys, and new legal descriptions (including residual descriptions, if any) as needed to legally create the Sale Property on the tax maps of the Hamilton County Auditor, including, without limitation, Developer shall have filed with the Hamilton County Auditor and Recorder a City-to-City *Quitclaim Deed* and *Plat of Survey*, in substantially the form attached as Exhibit E (*Form of Quitclaim Deed – Cut-Up*) hereto, for the purpose of subdividing the existing Auditor’s Parcel No. 051-0002-0139-00 into the Sale Property and a new parcel along Madison Road and Kennedy Avenue (the “**Remainder Property**”);

- (iv) *Dedication Plat*: Developer shall have filed a Dedication Plat, approved by the City, with the Hamilton County Recorder's Office, thereby dedicating to public right-of-way forever, the Dedication Property;
- (v) *Financing*: The City's receipt of a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing or other funds necessary to complete the Project;
- (vi) *Final Budget and Construction Contract*: The City's receipt of final construction bids and a final budget for construction of the Project and an executed copy of Developer's construction contract with Developer's general contractor for the Project;
- (vii) *Permits*: Developer shall have secured all zoning and permitting approvals necessary to construct the Project;
- (viii) *Project Completion*: Based upon all information then available to the City, the City must be reasonably satisfied that the Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;
- (ix) *Continued Compliance*: Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any other document executed between Developer and the City related to the Project shall continue to be true and accurate; and
- (x) *Other Information*: Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

(B) Developer's Right of Entry. Prior to Closing, Developer may enter the Sale Property during reasonable business hours to conduct tests and inspections related to the Project, *provided that* Developer must provide DCED at least 24 hours' notice prior to entering the Sale Property. Developer shall promptly repair any damage to the Sale Property resulting from its inspections and Developer shall hold the City harmless from any loss or expense arising out of Developer's activities on the Sale Property. Entry shall be at the sole risk of Developer.

(C) Copies of Due Diligence Items to be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to the Closing, and as such Due Diligence Items are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer prior to the Closing that pertain to the Project or the Sale Property, or are otherwise related to anything authorized pursuant to the terms and conditions of this Agreement.

(D) Right to Terminate. If prior to the Closing, either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of [____], 2022, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(E) Closing Date. Subject to the terms and conditions of this Agreement, the Closing shall take place on approximately the date that is **3 months** following the Effective Date, or on such earlier or later date upon which the parties may mutually agree.

(F) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title, and interest in and to the Sale Property to Developer by Quitclaim Deed substantially in the form of Exhibit F (Form of Quitclaim Deed – Conveyance)

hereto (the “**City’s Deed**”). Developer shall pay all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at the Closing, and from and after the Closing, Developer and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due on the Sale Property. At the Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Pursuant to Section 301-20 of the Cincinnati Municipal Code, at the Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City’s execution and delivery of the City’s Deed and shall not be deemed to have been merged therein.

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

(H) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Sale Property that exists at or prior to the time of the City’s execution of this Agreement (herein, a “**Pre-existing Environmental Condition**”), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City or otherwise obtained by the City, 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 Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, reasonable attorneys’ fees), demands, judgments, liability, and damages suffered or incurred by or asserted against the City as a result of or arising from any such Pre-existing Environmental Condition. Developer’s remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

3. Construction Commencement and Completion; Reconveyance of Property to City upon Failure to Timely Commence and/or Complete Construction.

(A) Construction Commencement & Completion. Following the Closing, Developer shall (i) (a) apply for and receive the required building permits from the City’s Department of Buildings and Inspections (“**B&I**”) for construction of the Project, and (b) commence on-site construction of the Project in accordance with the City-approved plans (collectively, “**Construction Commencement**”) no later than the Project Commencement Date; and (ii) complete construction of the Project (as evidenced by a certificate of occupancy for the Project) in accordance with the City-approved plans and specifications and all other City approvals (“**Construction Completion**”) no later than the Project Completion Date; *provided however*, the Project Completion Date may be extended by the Director of DCED for a period of up to 12 months upon written approval of such extension if, in the Director’s judgment, Developer is proceeding in good faith towards completion of the Project.

(B) Repurchase Option for Failure to Timely Commence Construction. As memorialized in the City’s Deed, if Construction Commencement has not occurred on or before the Project Commencement Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the “**First Repurchase Option**”), exercisable by giving written notice thereof to Developer at any time after the Project Commencement Date, but prior to the date of Construction Commencement. At such time as the City no longer has the right of the First Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the First Repurchase Option.

(C) Repurchase Option for Failure to Timely Complete Construction. As memorialized in the City's Deed, if Construction Completion has not occurred on or before the Project Completion Date, then, at any time thereafter, the City shall have the option to repurchase the Sale Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Second Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Project Completion Date, but prior to the date of Construction Completion. At such time as the City no longer has the right of the Second Repurchase Option and after written request by Developer, the City shall execute and deliver to Developer a recordable release of the Second Repurchase Option.

(D) Repurchase Option Closing. If the City elects to exercise either the First or the Second Repurchase Option, the reconveyance of the Sale Property to the City pursuant to such Repurchase Option shall take place on the date specified in the City's notice of election. On the date of such reconveyance: (i) Developer shall reconvey marketable title to the Sale Property (including any and all improvements located thereon) to the City or its designee in the same condition as presently exists, reasonable wear and tear and damage by the elements excepted (and under no circumstances shall the City be required to pay for the value of any improvements made by Developer to the Sale Property); (ii) Developer shall pay all customary closing costs associated with such reconveyance (e.g., conveyance fees, transfer tax, recording fees) such that the City shall not be required to come up with any funds at the closing for such re-conveyance; and (iii) real estate taxes and assessments shall be prorated as of the date of the reconveyance. The provisions of paragraphs (B)-(D) hereof shall be reflected in the City's Deed.

(E) Plans and Specifications. Developer shall submit its final plans and specifications for the Project to DCED and receive approval of the same from DCED. Following the City's approval, Developer shall design and construct the Project in accordance with those City-approved plans and specifications that are consistent with Exhibit C. Once the City has approved Developer's plans and specifications, Developer shall not make any material changes thereto without the City's prior written consent.

(F) Dedication and Acceptance of Dedication Property. The parties acknowledge that, Developer intends to dedicate the Dedication Property for public use, and intends for the City to accept the Dedication Property (subject to all approvals as required by DOTE and City Planning Commission, and subject to the passage by Cincinnati City Council of an ordinance to accept the dedication). Developer shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City.

(G) Contractors and Subcontractors. Developer shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor's Performance list.

(H) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the Project, including, without limitation, those set forth on Exhibit G (Additional 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 B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

(I) Inspection of Work. During construction at the Property, the City, its employees and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations under this Agreement. If the City determines that the work is not substantially in accordance with the City-approved plans and specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment and after giving Developer reasonable prior written notice thereof, to stop such work and order its replacement at Developer's expense.

(J) Mechanics' Liens. Developer shall not permit any mechanics' liens or other liens to be filed against the Project Site during construction. If a mechanic's lien shall at any time be filed, Developer shall, within 30 days after notice of the filing thereof, cause the same to be discharged of record.

(K) Reporting During Construction. Upon the City's request throughout construction, Developer shall provide the City with reports describing the status of the Project, including, without limitation, information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. Developer shall submit a final report to the City upon completion of the Project.

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

4. Insurance; Indemnity.

(A) Insurance. Throughout construction, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City. Prior to Construction Commencement, Developer shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time.

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

(C) Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify, and hold the City, its officers, council members, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Developer, its agents, employees, contractors, subcontractors, licensees, invitees, or anyone else acting at the request of Developer in connection with the Project. Developer's obligations under this paragraph shall survive termination of this Agreement with respect to Claims suffered, incurred, asserted, or arising prior to the date of termination. As used herein, "**Claims**" means, collectively, any and all actions, suits, claims, losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability, and damages.

5. Casualty; Eminent Domain. If the Project or the Project Site is damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site is taken by exercise of eminent domain (federal, state, or local), Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which it was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. 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 original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the improvements are being repaired or restored.

6. Default; Remedies.

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

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

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

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

(B) Remedies. Upon the occurrence of an event of default under this Agreement that is not cured or corrected within the Cure Period, the City shall be entitled to: (i) terminate this Agreement by giving Developer written notice thereof if the default occurs prior to the Closing, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City as a result of a default of Developer under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

7. Notices. All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by UPS, Federal Express or other recognized courier service, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their

addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati
Dept of Community & Economic Development
805 Central Avenue, Suite 700
Cincinnati, Ohio 45202

To Developer:

Oakley Crossings Holdings, LLC
Attn: Christopher Hildebrant
8600 Governors Hill Drive, Suite 160
Cincinnati, Ohio 45249

With copies to:

Dinsmore & Shohl LLP
Attn: Charles E. Baverman III
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

If Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, Ohio 45202.

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

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

(B) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for 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.

(C) 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 Developer's organizational documents, 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.

(D) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, or its parents, subsidiaries, or affiliates, at law or in equity or before or by any governmental authority that, if determined adversely, would impair the financial condition of such entity or its ability to perform its obligations with respect to the matters contemplated herein.

(E) 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 Project.

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

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

9. Reporting Requirements.

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

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

10. General Provisions.

(A) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

(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 and Waivers. This Agreement may be amended, waived, or otherwise modified only by a written amendment signed by both parties.

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

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

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

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

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

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

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

(K) Time. Time is of the essence with respect to the performance by Developer of its obligations under this Agreement.

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

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

(N) 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.

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

11. Coordinated Report Conditions. Developer shall abide by the additional conditions identified in Coordinated Report #27-2021 and Coordinated Report #81-2021, including, without limitation, the following:

(A) DOTÉ. A street opening permit, obtained by a DOTÉ licensed street contractor, is required for all private improvements in the public right of way. All improvements in the public right of way must be built to City standards, policies, and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Two sets of plan drawings must be attached to the permit application for review by DOTÉ.

(B) Greater Cincinnati Water Works. There are active water service lines located in the Dedication Property. Developer shall disconnect any existing water service branches not to be used for the Project, at the Developer's expense. Developer shall fill out the online Discontinuance Form (FOD) at <https://www.cincinnati-oh.gov/water/engineering-construction/forms-specifications/fod/> authorizing removal of any existing water service branches before any new water service can be sold. Developer shall work with Greater Cincinnati Water Works to determine a plan to address a fire hydrant and service branches within the area of the Dedication Property.

(C) Metropolitan Sewer District of Greater Cincinnati ("MSDGC").

(i) The Sale Property shall be subject to a 20-foot-wide minimum permanent sewer easement that provides access, operations, and maintain of the existing combined/sanitary sewers and {00356362-12}

manholes, which easement will be reserved in the City's Deed. Note that an additional 3 feet on either side of said 20-foot-wide minimum permanent sewer easement is required pursuant to the MSDGC Rules and Regulations Sections 207. No structure shall interfere with the access to said public sewer nor shall any structure exert loading upon a public sewer per Section 206 of the MSDGC Rules and Regulations. A change in existing topography or proposed site plan submittal may necessitate a revision to the minimum width requirement.

(ii) An Excavation and Fill permit approval and/or bond from the MSDGC may be necessary for any construction, construction traffic, earthwork, or other construction activity related to the Project. Additional MSDGC requirements may be established by the permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, pre- and post-construction CCTV-ing, etc.) depending on the final Project plan-s and specifications. Information will be needed from the Project to ensure no new loads are exerted on public sewers.

(iii) Developer shall coordinate with MSDGC to relocate the existing public sewers and an existing combined sewer overflow structure located near Duck Creek located within the Project Site, which relocation or other method of addressing such existing infrastructure shall be to the satisfaction of MSDGC.

(D) Cincinnati Bell. Cincinnati Bell has existing underground telephone facilities that must remain in place, in service, and accessible. Any damage done to the facilities, or any work done to relocate the facilities as a result of the Project, shall be handled entirely at Developer's expense.

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

Exhibit A – *Site Plan*

Exhibit B-1 – *Legal Description – Sale Property*

Exhibit B-2 – *Survey Plat – Sale Property*

Exhibit C – *Statement of Work, Budget, and Sources of Funds*

Exhibit D – *Dedication Plat*

Exhibit E – *Form of Quitclaim Deed – Cut-Up*

Exhibit F – *Form of Quitclaim Deed – Conveyance*

Exhibit G – *Additional Requirements*

[signature pages 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**").

OAKLEY CROSSINGS HOLDINGS, LLC,

By: _____

Printed Name: _____

Title: _____

Date: _____, 2022

[City signatures on the following page]

CITY OF CINCINNATI

By: _____
John P. Curp, Interim City Manager

Date: _____, 2022

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A
to Property Sale and Development Agreement

Site Plan

TO BE ATTACHED

Exhibit B-1
to Property Sale and Development Agreement

Legal Description – Sale Property

Situated in Section 22, Township 4, Fractional Range 2, Columbia Township, the City of Cincinnati, Hamilton County, Ohio, being part of a tract of land conveyed to the City of Cincinnati by deed in D.B. 2152 Pg. 87 the boundary of which is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue, being North 25°13'33" West, 13.18 feet from the intersection of the existing east right of way line of Kennedy Avenue and the north right of way line of Madison Road;

Thence along a new division line through the grantors tract the following four (4) courses:

1. South 64°44'34" West a distance of 17.09 feet to a 5/8" iron pin set;
2. Along a curve to the right for an arc distance of 20.47 feet to a 5/8" iron pin set, said curve having a radius of 13.00 feet, a central angle of 90°11'49" and a chord which bears North 70°09'32" West a distance of 18.42 feet;
3. North 25°03'37" West a distance of 27.10 feet to a 5/8" iron pin set;
4. Along a curve to the right for an arc distance of 51.86 feet to a 5/8" iron pin set in the north line of the grantors tract, said curve having a radius of 463.94 feet, a central angle of 6°24'16" and a chord which bears North 22°41'24" West a distance of 51.83 feet;

Thence along the north line of the grantor, North 64°56'58" East a distance of 27.72 feet to a 5/8" iron pin set in the existing east right of way line of Kennedy Avenue;

Thence along said right of way line, South 25°13'33" East a distance of 91.82 feet to the POINT OF BEGINNING;

Containing 0.0617 acres of land more or less and being subject to all easements and restrictions of record.

Bearings are based on the Ohio State Plane coordinate system, South Zone (NAD 83) per GPS Observation utilizing the Ohio Department of Transportations virtual reference stationing.

Based on a field survey in November of 2020 performed by Cardinal Engineering Corporation under the direct supervision of Daniel K. York, P.S. Ohio Professional Surveyor Number S-8729.

Exhibit B-2
to Property Sale and Development Agreement

Survey Plat – Sale Property

SEE ATTACHED

Exhibit C
to Property Sale and Development Agreement

Statement of Work, Budget, and Sources of Funds

I. Statement of Work

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site.

Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants.

II. Budget

Acquisition	\$4,320,000.00
Site Work	\$1,430,000.00
Retail Shell	\$2,002,000.00
Retail Tenant Improvements	\$291,200.00
Soft Costs	\$295,566.49
Commissions	\$409,200.00
Builder & Development Fee	\$85,000.00
Interest Reserve	\$233,311.64
Contingency	\$26,638.36
TOTAL PROJECT COSTS	\$9,092,916.49

III. Sources of Funds

Debt	\$6,353,282.00
Pace Financing	\$1,771,846.00
Owner Equity	\$967,788.49
TOTAL	\$9,092,916.49

Exhibit D
to Property Sale and Development Agreement

Dedication Plat

TO BE ATTACHED

Exhibit E
to Property Sale and Development Agreement

Form of Quitclaim Deed – Cut-Up

TO BE ATTACHED

[SPACE ABOVE FOR RECORDER'S USE ONLY]

Property: _____ acre parcel along Madison Road

(cut-up to create _____ acre parcel (Parcel "A")
and 0.0617 acre parcel (Parcel "B"))

QUITCLAIM DEED

(Cut-up)

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), hereby grants and conveys to the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202, all of the City's right, title, and interest in and to the real property depicted on Exhibit A (Plat of Survey) and described on Exhibit B (Legal Description – Parcel "A") and Exhibit C (Legal Description – Parcel "B") hereto.

Property Address: cut-up of _____ acre parcel

Auditor's parcel #: 051-0002-0139-00

This Deed is executed and recorded in connection with the cut-up of a _____ acre parcel of land into two parcels containing _____ acres (Parcel "A") and 0.0617 acres (Parcel "B").

This conveyance is permitted under Ohio Revised Code Section 5302.18, which provides that a grantor under a deed may also be a grantee.

The City's execution of this instrument was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

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

[Signature Page Follows]

Executed on _____, 2022.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified 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, Suite 214
Cincinnati, Ohio 45202

- Exhibits:
Exhibit A – *Plat of Survey*
Exhibit B – *Legal Description – Parcel “A”*
Exhibit C – *Legal Description – Parcel “B”*

Exhibit A
to Quitclaim Deed – Cut-Up

Plat of Survey

cut-up of _____ acre parcel to create
_____ acre parcel (Parcel “A”) & 0.0617 acre parcel (“Parcel “B”)

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Quitclaim Deed – Cut-Up

Legal Description – Parcel “A”

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Quitclaim Deed – Cut-Up

Legal Description – Parcel “B”

TO BE ATTACHED TO EXECUTION VERSION

Exhibit F
to Property Sale and Development Agreement
Form of Quitclaim Deed – Conveyance

SEE ATTACHED

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

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), having an address of 801 Plum Street, Cincinnati, Ohio 45202, for valuable consideration paid, hereby grants and conveys to **OAKLEY CROSSINGS HOLDINGS, LLC**, a Delaware limited liability company, the address of which is 8600 Governors Hill Drive, Suite 160, Cincinnati, Ohio 45249 (“**Grantee**”), all of the City’s right, title, and interest in and to the real property described on Exhibit A (Legal Description) hereto (the “**Property**”).

Property Address: 0.0617 acre parcel of land east of Kennedy Avenue

Auditor’s Parcel No(s): _____

THIS TRANSFER IS SUBJECT TO, AND THE CITY HEREBY CREATES, THE FOLLOWING EASEMENTS, COVENANTS AND RESTRICTIONS.

(A) Permanent Sewer Easement in Favor of the City of Cincinnati. The City hereby reserves and creates a permanent utility easement over a 20-foot wide area of the Property as more particularly described on Exhibit B (Legal Description – Sewer Easement) hereto, and depicted on Exhibit C (Easement Plat – Sewer Easement) hereto (the “**Easement Area**”), for the operation, maintenance, repair, reconstruction, removal, or replacement of existing sanitary sewer lines, facilities, equipment, and all appurtenances located within the Easement Area, including the right to enter upon and re-enter upon the Property to access the Easement Area.

No structure of any kind which can interfere with access to said public sewers shall be placed in or upon the Easement Area, excepting items such as recreational surfaces, paved areas for parking lots, driveways, or other surfaces used for ingress and egress, plants, trees, shrubbery, fences, landscaping, or other similar items, being natural or artificial. Any of the aforesaid surfaces, paved areas, plants, trees, shrubbery, fences, landscaping, or other similar items that may be placed upon the Easement Area shall be so placed at the sole expense of Grantee, its successors, or assigns, and the City, its successors, or assigns shall not be responsible to Grantee, its successors or assigns, for the condition, damage to, or replacement of any such aforesaid items, or any other items placed upon the Easement Area, resulting from the existence or use of the Easement Area by Grantee, its successors or assigns.

Any structure constructed on the Property after the date of acknowledgment herein shall be kept not less than three (3) feet outside the Easement Area line nearest the site of the proposed structure.

Any deviation from the aforesaid restrictions shall be petitioned to the City by written request. Each such request shall be considered on an individual basis.

[subject to possible creation of utility easements in favor of Cincinnati Bell and/or Duke Energy for their existing facilities if no existing easements are in place]

(B) Re-conveyance to City upon Failure to Timely Commence or Complete Construction. The City and Grantee are parties to a *Property Sale and Development Agreement* dated _____, 20__ (the "**Agreement**"), pursuant to which Grantee is required to redevelop the Property. If Grantee does not (i) commence construction at the Property on or before the Project Commencement Date (as defined in the Agreement) in accordance with the Agreement, or (ii) complete construction at the Property on or before the Project Completion Date (as defined in the Agreement) in accordance with the Agreement, Grantee shall re-convey the Property to the City as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee a release of such rights for recording in the Hamilton County, Ohio Recorder's Office. Until such time as the Property has been reconveyed to the City or the City has released or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

This conveyance was authorized by Ordinance No. ____-2022, passed by Cincinnati City Council on _____, 2022.

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

[Signature Page Follows]

Executed on _____, 20__.

CITY OF CINCINNATI

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20____, by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified 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, Suite 214
Cincinnati, Ohio 45202

- Exhibits:
Exhibit A – *Legal Description – Property*
Exhibit B – *Legal Description – Sewer Easement*
Exhibit C – *Easement Plat – Sewer Easement*

Exhibit A
to Quitclaim Deed – Conveyance

Legal Description – Property

TO BE ATTACHED TO EXECUTION VERSION

Exhibit B
to Quitclaim Deed – Conveyance

Legal Description – Sewer Easement

TO BE ATTACHED TO EXECUTION VERSION

Exhibit C
to Quitclaim Deed – Conveyance
Easement Plat – Sewer Easement

TO BE ATTACHED TO EXECUTION VERSION

Exhibit G
to Property Sale and Development Agreement

Additional Requirements

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

This Exhibit serves two functions:

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

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

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

(A) Construction Workforce.

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

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

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least

halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the “**Construction Workforce Goals**”).

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and 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”

{00356362-12}

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 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.

¹ Note: this section will be revised prior to execution due to programmatic changes being implemented by the Department of Community and Economic Development as a result of recent legislation passed by City Council. {00356362-12}

(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, {00356362-12}

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

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3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

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

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

ADDENDUM I
to
Additional Requirements Exhibit
City's Prevailing Wage Determination

REQUEST FOR PROJECT WAGE DETERMINATION

DATE RECEIVED: 2/11/22

ORIGINAL ASSIGNED NUMBER: 2022-034

DEI USE ONLY

Fillout and Circle all that Apply Below:

FUNDING GUIDELINES:
(State or Federal)

RATES THAT APPLY:
(Building, Heavy, Highway, Residential)

[Prevailing Wages Do Not Apply]

DECISION NUMBER: n/a

MODIFICATIONS: n/a

DECISION DATE: n/a

EXPIRATION DATE: n/a

SUPERSEDES DECISION NUMBER:

DETERMINATION BY:

Name: Lydgia Sartor

Title: Development Manager

Date: 2/11/22

APPROVED BY:

Edgar De Veyra, Interim Director
DIRECTOR, DEPARTMENT OF ECONOMIC
INCLUSION

COMMENTS:

As described the project does not involve any direct public funding and, as such, is exempt from prevailing wage.

Local wage does not apply as the project does not meet the definition of "Development Agreement" according to CMC 321-1-D2.

Note: Any change in scope or funding or failure of the project to commence within 90 days of this determination will require resubmission of this determination.

REQUESTING AGENCY OR DEPT:
DCED

CONTACT PERSON AND PHONE NUMBER:
Taylor German x4546

Requested Date: 02/11/2022
Estimated Advertising Date: 05/01/2022
Estimated Bid Opening Date: 05/01/2022
Estimated Starting Date: 06/01/2022

SOURCE AND FUND NUMBER

CITY	FUND
STATE	FUND
COUNTY	FUND
FEDERAL	FUND

PROJECT ACCOUNT NUMBER:

AMT. OF PUB. FUNDING \$: 0

TOTAL PROJECT DOLLARS: 9,092,916.49

NAME OF PROJECT

Crossings of Oakley

TYPE OF WORK

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

PROJECT LOCATION

Project Location: 2628-2646 Madison Road 2, single-story commercial/retail buildings will be newly constructed.

PROJECT FUNDING SOURCE

Below Fair Market Value sale of City-owned property. City will sell property with FMV of \$53,750 for \$1, in exchange for Developer dedicating a portion of their property with a FMV of \$73,750 as right-of-way at no cost to the City. Project also involves a Commercial Tax Abatement.

PROJECT SCOPE OF WORK AND BUDGET

Developer will demolish the existing structures on the Property and relocate existing sewer lines to facilitate the Project. Developer will consolidate the Sale Property with the Developer Property to create the Project Site. Developer will construct approximately 16,200 square feet of commercial retail space on the Property, consisting of a stand-alone, 1,600 square foot building for occupancy by Swensons Drive-In Restaurants; and another building intended to house three to five restaurant, coffee shop, and/or other retail tenants. Acquisition: \$4,320,000.00 Site Work: \$1,430,000.00 Retail Shell: \$2,002,000.00 Retail Tenant Improvements: \$291,200.00 Soft Costs: \$295,566.49 Commissions: \$409,200.00 Builder & Development Fee: \$85,000.00 Interest Reserve: \$233,311.64 Contingency: \$26,638.36 TOTAL PROJECT COSTS: \$9,092,916.49

**DEI 217 Form
REV: 6/12/2017**