

Contract No. \_\_\_\_\_

**PROPERTY SALE AND DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI**

*and*

**756 E MCMILLAN, LLC**  
an Indiana limited liability company

Project: Redevelopment of site at 750, 752, and 758 E. McMillan Street

Dated: \_\_\_\_\_, 2021

## PROPERTY SALE AND DEVELOPMENT AGREEMENT

THIS PROPERTY SALE AND DEVELOPMENT AGREEMENT ("**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, having an address of 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **756 E MCMILLAN, LLC**, an Indiana limited liability company, having an address of 460 Virginia Avenue, Indianapolis, Indiana 46203 ("**Developer**"). **739 E MCMILLAN ST, LLC**, an Indiana limited liability company and affiliate of Developer ("**Phase I Developer**"), is a party to this Agreement for the exclusive purpose of acknowledging and agreeing to Section 3.

### Recitals:

A. The City is the owner of the real property located at 750, 752, and 758 E. McMillan Street in the Walnut Hills neighborhood as shown on Exhibit A (Site Map) hereto, designated as Hamilton County Auditor's parcel nos. 070-0002-0068-00, 070-0002-0069-00, and 070-0002-0070-00, respectively (the "**City Sale Property**"), which is under the management and control of the City's Department of Community and Economic Development ("**DCED**").

B. The City desires to put the City Sale Property to its highest and best use.

C. Developer has informed the City that it desires to purchase the City Sale Property. Developer owns or is in the process of acquiring certain other property adjacent to the City Sale Property, namely 2507-2519 Stanton Avenue, 2508-2520 Hemlock Street, and 2521-2525 Chatham Street in the Walnut Hills neighborhood and as depicted on Exhibit A (the "**Other Property**"; and, together with the City Sale Property, collectively the "**Property**" or the "**Project Site**").

D. Developer proposes to develop the Project Site into two buildings consisting of approximately 62 residential units at a total project cost (including property acquisition, construction, financing and other hard and soft costs) of approximately \$10,508,310 (as described more particularly in Exhibit B (Scope of Work, Budget and Source of Funds) hereto, the "**Project**" and the "**Improvements**", as applicable), which Developer intends to finance using approximately \$7,355,817 in commercial debt and approximately \$3,152,493 in Developer equity, as shown in Exhibit B (with no further assistance to be provided by the City, other than a real property tax exemption for the Improvements pursuant to a *Community Reinvestment Area Tax Exemption Agreement*).

E. Developer anticipates commencing construction within ninety (90) days of the Closing (defined below) (the "**Target Construction Commencement Date**") and completing construction within twenty-four (24) months of commencing construction.

F. Developer anticipates that the Improvements will create approximately 55 temporary construction jobs and 3 permanent jobs.

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

H. 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.

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

J. The City's Real Estate Services Division has determined that the fair market value of the City Sale Property, as determined by appraisal, is \$77,000.00; however, the City is agreeable to selling the City Sale Property to Developer for less than fair market value; namely, for \$1.00 (the "**Purchase Price**"), to make the Project economically feasible.

K. The City, Phase I Developer, and Firehouse Row Holdings, LLC are parties to a certain *Funding, Sale, and Development Agreement* dated June 26, 2018 (the "**Original Agreement**"), pertaining to the sale and development of certain property nearby in proximity to the Property (as more particularly described in the Original Agreement, the "**Phase I Property**"), pursuant to which Phase I Developer is obligated to pay the City an Incentive Recoupment Payment (as defined therein, the "**Incentive Recoupment Payment**") upon a Qualifying Sale (as defined therein, the "**Qualifying Sale**").

L. Developer has requested the City to waive Phase I Developer's obligation to pay the Incentive Recoupment Payment. The City is agreeable to doing so subject to the terms and conditions herein.

M. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the City Sale Property to Developer at its meeting on June 4, 2021.

N. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. \_\_\_\_-2021, passed by City Council on \_\_\_\_\_, 2021.

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

1. **Due Diligence Period (365 days following the Effective Date).**

(A) **Due Diligence Materials.** Within three hundred sixty-five (365) days of the Effective Date (the "**Due Diligence Period**"), Developer shall conduct due diligence investigations for the Project, and in connection therewith shall obtain, and as they are received shall deliver complete copies thereof to DCED, the following items, all at no cost to the City (the "**Due Diligence Materials**"):

- (i) **Title:** an ALTA commitment for an owner's policy of title insurance covering the Property;
- (ii) **ALTA Survey:** an ALTA survey of the Property showing all easements and other plottable matters of record;
- (iii) Intentionally deleted;
- (iv) **Environmental:** phase 1 (and if obtained, a phase 2) environmental site assessment for the Property;
- (v) **Conceptual Drawings:** conceptual drawings, followed by preliminary plans and specifications for the Improvements;
- (vi) **Building Permit & Zoning Approvals:** evidence that Developer has obtained a building permit issued by the City's Department of Buildings and Inspections ("**B&I**") for the construction of the Improvements, including any and all zoning approvals that may be required;
- (vii) **Construction Schedule:** the proposed construction schedule for the Project;

- (viii) Financing: evidence that all financing necessary for the Project has been or will be obtained, including without limitation evidence of commercial bank financing;
- (ix) As-Built Appraisal: an “as built” appraisal of the Improvements (if required by Developer’s lender);
- (x) Acquisition of Other Property: evidence that Developer completed the acquisition and holds fee title to the Other Property; and
- (x) Other Information: such other information and documents pertaining to Developer or the Project as the City may reasonably require.

(B) Developer’s Termination of Agreement during Due Diligence Period. If, at any time during the Due Diligence Period Developer determines that the Project is not feasible, Developer shall have the right, in its sole discretion, to terminate this Agreement by delivering a written termination notice to the City at any time during the Due Diligence Period. Within 10 days after the effective date of the termination of this Agreement prior to the Closing pursuant to any of the termination provisions set forth in this Agreement, Developer shall provide the City with a complete set of the Due Diligence Materials obtained by Developer through such date.

(C) City’s Termination of Agreement if Closing does not occur by within 365 days of the Effective Date. If for any reason the Closing (as defined below) has not occurred within three hundred sixty-five (365) days of the Effective Date, the City shall have the right to terminate this Agreement by delivering a written termination notice to Developer at any time thereafter (but prior to the Closing if the Closing later occurs). The City acknowledges that Developer intends to spend considerable time and money in conducting its due diligence investigations and agrees that, before exercising its right to terminate this Agreement under this paragraph, the City will work in good faith with Developer in an effort to resolve the City’s objections and/or reason for the delay in the Closing (provided that the City shall not be expected to postpone the Closing beyond the date that is three hundred sixty-five (365) days after the Effective Date).

## 2. Closing.

(A) Closing Date. Unless this Agreement is terminated in accordance with the termination provisions hereof, the closing on the City’s conveyance of the City Sale Property to Developer (the “**Closing**”) shall occur within three hundred sixty-five (365) days of the Effective Date, unless the parties mutually agree upon an earlier or later date. The occurrence of Closing is subject to the parties’ satisfaction with the various due diligence matters described in Section 1 above.

(B) 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 City Sale Property to Developer (or authorized assignee) by Quitclaim Deed in the form of Exhibit C (Quitclaim Deed) hereto (the “**City’s Deed**”). Developer shall pay all conveyance fees, transfer taxes, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other customary closing costs associated with the Closing such that the City shall not be required to come up with any funds for the Closing; provided, however, the City shall be responsible for discharging any monetary liens on the City Sale Property, other than real estate taxes and assessments. There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Developer shall pay all real estate taxes and assessments allocable to the City Sale Property thereafter becoming due (and regardless of the prior period to which they relate; such agreement on the part of Developer constituting partial consideration for the City’s agreement to sell the City Sale Property to Developer for less than fair market value). At Closing, the parties shall execute a closing statement and any and all other customary closing documents or affidavits 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, Cincinnati Municipal Code, at Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties,

judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities.

(C) Completion Guaranty. No later than the Closing, and as a condition of the Closing, Developer shall provide the City with a completion guaranty from a parent or affiliated entity whose financial condition is acceptable to the City, substantially in the form of Exhibit D (Completion Guaranty) hereto (the “**Completion Guaranty**”).

(D) Re-conveyance of City Sale Property to City for Failure to Timely Commence Construction. Developer acknowledges that Developer’s agreement to timely commence and complete construction, which will provide economic benefits to the City, is of utmost importance to the City. Accordingly, no later than ninety (90) days following the Target Construction Commencement Date, Developer shall have (i) submitted an executed copy of its construction contract with its general contractor, (ii) applied for and received the required building permits from B&I for construction of the Project, (iii) caused its general contractor to have record a notice of commencement for the Project on the Property, and (iv) commenced on-site construction of the Project (collectively, “**Construction Commencement**”). As memorialized in the City’s Deed, if Construction Commencement has not occurred within ninety (90) days after the Target Construction Commencement Date (the “**Re-conveyance Date**”), then, notwithstanding anything to the contrary in this Agreement, the City shall have the option to repurchase the City 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 immediately prior to the date and time of the Closing, and 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 City Sale Property) (the “**Re-conveyance**”). Real estate taxes and assessments shall be prorated at the closing of the Re-conveyance in accordance with local custom. Developer shall pay any and all closing costs associated with the Re-conveyance such that the City shall not be required to come up with any funds for the Re-conveyance. The City may exercise its option to cause the Re-conveyance by given written notice of such exercise to Developer at any time after the Re-conveyance Date, but prior to the date of Construction Commencement.

**3. Waiver of Incentive Recoupment Payment**. The City hereby agrees to waive Phase I Developer’s obligation to pay the Incentive Recoupment Payment contemplated in the Original Agreement upon written request of Phase I Developer and in accordance with the terms of this Section 3. Phase I Developer intends to sell the Phase I Property (or all of the membership interests in the Phase I Developer) to a third-party purchaser (the “**Purchaser**”) following the Effective Date, which sale constitutes a Qualifying Sale pursuant to the Original Agreement (the “**Phase I Sale**”). Phase I Developer shall deliver (or cause the delivery of) a written notice to the City identifying the Purchaser promptly after the execution of definitive documentation for the sale of the Phase I Property (the “**Qualifying Sale PSA**”). In accordance with the Original Agreement and the *Restrictive Covenant* executed by Phase I Developer for the benefit of the City, dated June 26, 2018, recorded on June 27, 2018, in OR 13698, Page 2084, Hamilton County, Ohio Recorder’s Office (the “**Restrictive Covenant**”), the City’s consent (the “**Phase I Sale City Consent**”) to the Phase I Sale and the assignment of the Original Agreement to Purchaser under the Qualifying Sale PSA is required, subject to the limitations specified in Section 13(A) of the Original Agreement. The delivery of the Phase I Sale City Consent shall be a mutual condition to the Closing under this Agreement. Notwithstanding anything to the contrary in the Original Agreement, upon the earlier of (i) Construction Commencement for the Project or (ii) payment of the Incentive Recoupment Payment related to the Phase I Sale, and upon written request by the Developer or the Phase I Developer, the City will provide an executed, recordable release of the Restrictive Covenant. Nothing in this provision shall be construed to amend or modify any of the City’s other rights or remedies in the Original Agreement.

#### **4. Construction**

(A) Maintenance of Property Between Closing and Prior to Construction. Between the Closing and Construction Commencement, Developer, at no expense to the City, shall maintain the Property in safe and presentable condition, including keeping the site reasonably free of debris and other unsightly materials.

(B) Commencement and Completion; Transfer of City Sale Property Prohibited. Following the Closing, Developer shall commence and thereafter complete the redevelopment of the Property in substantial accordance with the City-approved construction schedule and City-approved plans and specifications. Except as may be otherwise specifically permitted under the terms of this Agreement (including transfers expressly permitted pursuant to paragraph 11(A)), Developer shall not transfer title to the City Sale Property to a third party prior to substantial completion of construction, and any attempt to do so shall constitute a default under this Agreement. (Developer's transfer of title to the City Sale Property to an affiliate of Developer upon satisfaction of the conditions set forth under paragraph 11(A) of this Agreement shall be permitted). During construction, Developer shall take all reasonable steps to avoid materially disrupting the occupants of adjacent properties.

(C) Applicable Laws. Developer shall obtain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to the Project, including without limitation those set forth on Exhibit E (Additional Requirements) hereto, to the extent applicable. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever permits and other approvals from the Department of City Planning, B&I, the Department of Transportation and Engineering ("**DOT**"), Metropolitan Sewer District ("**MSD**"), Greater Cincinnati Water Works ("**GCWW**"), Storm Water Management Unit (SMU), other City departments, City Planning Commission, or Cincinnati City Council that may be required in connection with the Project.

(D) Barricade Fees Payable to DOT. Without limitation of the foregoing, Developer acknowledges that, if applicable, (i) it will be required to obtain a barricade permit and pay barricade fees to DOT for the closure of any sidewalks and curb lanes of the adjacent streets if and when demolition or construction necessitates closing the adjoining streets or portions thereof, and (ii) with many entities competing for space on City streets, it is important that construction activities be limited to as little space and the shortest duration as possible and that all work be scheduled and performed to cause the least interruption to vehicular travel, bicyclists, pedestrians and businesses; therefore, DOT shall have the right to evaluate Developer's need for a barricade throughout construction and, if at any time after consultation with Developer DOT determines that a barricade is not needed, DOT shall have the right to withdraw the permit.

(E) Inspection of Work. During construction, 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 hereunder.

(F) Mechanics Liens. Developer shall not permit any mechanics' or other similar liens to remain on the Property during construction, provided however, that Developer may contest the validity of any claim or demand in good faith and in accordance with such rights to contest as may be permitted by Developer's construction lender and with diligence and continuity to the City's reasonable satisfaction.

(G) Project Information. During construction, Developer shall provide the City with such additional pertinent information pertaining to the Project as the City may reasonably request.

(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 City 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, 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.

(I) 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 the construction has been completed.

## **5. Insurance; Indemnity.**

(A) Insurance during Construction. From Construction Commencement through completion of the Project, 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/\$1,000,000 aggregate, naming the City as an additional insured with respect to the Project, (ii) builder's risk insurance in the amount of one hundred percent (100%) of the value of the improvements constructed as part of the Project, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's lender(s) for the Project, and (v) such other insurance as may be reasonably required by the City. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City.

(B) Waiver of Subrogation. The City and Developer each hereby waives all claims and rights of recovery, and on behalf of their respective insurers, rights of subrogation, against the City and Developer, respectively, and their 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 to be maintained under this Agreement, 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 to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) General 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 its request in connection with the Project.

**6. Casualty; Eminent Domain.** If the Property is damaged or destroyed by fire or other casualty during construction, or if any portion of the Property is taken by exercise of eminent domain (federal, state, or local), Developer shall cause the damage to be repaired, as expeditiously as possible, and to the extent practicable, to substantially the same condition that existed 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 insurance 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 reconstruction in accordance with the applicable requirements set forth herein. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the damage 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 failure of Developer to perform any obligation under this Agreement, and failure to correct such failure within thirty (30) days after their 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 such Cure Period and thereafter diligently completes such cure within sixty (60) days after receipt of the City’s initial notice of default; or

(ii) The dissolution of Developer or 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 property of Developer.

(B) Remedies. Upon the occurrence of an event of default under this Agreement which is not cured or corrected within any applicable Cure Period, the City shall be entitled to: (i) terminate this Agreement by giving 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 (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity. 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.

**8. Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

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

To Developer:

756 E McMillan, LLC  
460 Virginia Avenue  
Indianapolis, Indiana 46203  
Attention: Tadd M. Miller

With a copy to:  
Dinsmore & Shohl LLP  
One Indiana Square, Suite 1800  
Indianapolis, Indiana 46204  
Attention: Samantha R. Hargitt

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

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

(i) Developer is duly organized and validly existing under the laws of the State of Indiana, is or will, prior to Closing, be authorized to do business in the State of Ohio and has properly filed all certificates and reports required to be filed by it under the laws of the State of

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Indiana and the State of Ohio, and is not in violation of any laws of the State of Indiana or 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 therein. This Agreement has by proper action been duly authorized, executed and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Developer.

(iii) The execution, delivery and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or (if applicable) the organizational documents of Developer, or any mortgage, indenture, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(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, which would materially adversely affect Developer's ability to perform the Developer's obligations set forth under this Agreement.

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

(vi) 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.

(vii) Neither Developer (nor its affiliates, if applicable) owes any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

## **10. Reporting Requirements.**

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

(B) City's Right to Inspect and Audit. From and after the Effective Date and for a period of three years after the Project has been completed, 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.

## **11. General Provisions.**

(A) Assignment. Developer shall not assign its rights or interests under this Agreement or any ancillary agreements with the City without the prior written consent of the City, *provided* that the City shall not unreasonably withhold, condition or delay its consent to assignments to its parent, subsidiaries or affiliates (in each case with prior written notice to the City); and *provided*, further, that the City may require the execution of an amendment hereto or other clerical documentation to effect such assignment or substitution of Developer. The foregoing notwithstanding: (i) Developer's collateral assignment of its rights and interests under this Agreement to its lender for the Project (and subsequent assignments by such lender) shall be permitted; (ii) Developer may assign its rights and interests under this Agreement to a wholly-owned affiliate of Developer or to a wholly-owned affiliate of Developer's parent entity provided that (a) no such assignment shall relieve Developer from any obligations to the City under this Agreement, and, notwithstanding anything in the assignment document to the contrary, as between the City and Developer, Developer shall remain primarily liable to the City for the performance of all obligations of Developer under this Agreement, (b) Developer shall notify the City in writing of any such proposed assignment prior to the effective date of the assignment, and shall provide the City with a copy of the executed assignment document within 2 business days following the effective date of the assignment, and (c) Developer shall provide such additional information about the assignee as the City may request, including without limitation information establishing that the assignee is in good standing with the City and has the ability to assume and fully perform Developer's obligations under this Agreement; and (iii) Developer may assign its rights and interests under this Agreement in connection with a sale and transfer of all of its interest in and to the Project and the City Sale Property, including all contract rights and entitlements to and for the City Sale Property to a third party purchaser (a "**Successor Developer**"), and such Successor Developer shall assume all rights and obligations of the Developer hereunder; provided that the prior written consent of the City shall be required unless (y) the Successor Developer is the Purchaser (or an affiliate controlled by or under common control with the Purchaser) of the Phase I Property pursuant to the Qualifying Sale PSA, and (z) the City has delivered the Phase I Sale City Consent. Upon the assignment to and assumption by a Successor Developer pursuant to (iii), the original Developer shall be released from all further obligations under this Agreement beginning as of the date of such assignment and assumption.

(B) Entire Agreement; Conflicting Provisions. This Agreement (including the exhibits hereto) and the other agreements referred to herein contain 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. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

(C) Amendments. This Agreement may be amended 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 permitted assigns.

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

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

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

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

(J) No Third Party Beneficiaries. No third-party beneficiary rights are created by this Agreement.

(K) No Brokers. The parties represent 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 the parties' execution of this Agreement or the sale of the City Sale Property.

(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) Contingency for Legislative Authorization from City Council. Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement if for any reason City Council does not pass any and all additional ordinances as may be necessary for the City to carry out the terms of this Agreement.

(N) Survival. 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 merged therein.

12. **Exhibits**. The following exhibits are attached to this Agreement and made a part hereof:
- Exhibit A - *Site Map*
  - Exhibit B - *Scope of Work; Preliminary Budget; Source of Funds*
  - Exhibit C - *Quitclaim Deed*
  - Exhibit D - *Completion Guaranty*
  - Exhibit E - *Additional Requirements*

13. **Coordinated Report Conditions (CR #79-2019)**. Developer shall abide by the following additional conditions:

(a) **DOTE**: DOTE shall review and approve future development plans pertaining to the City Sale Property.

(b) **MSD**: Prior to applying for permits for the Project from B&I, the Metropolitan Sewer District of Greater Cincinnati ("**MSD**") may require that Developer submit a Request for Availability for Sewer Service ("**RASS**"). The RASS will outline any additional MSD project requirements, including, without limitation, need for MSD tap permits and/or an Ohio EPA Permit to Install, utilization of licensed and bonded sewer tappers with MSD, sewer inspection scheduling, project on-site separation of flow requirements, MSD detention requirements, MSD excavation/fill permit for work over or near existing sewers, identifying easements, and a recommendation for Developer or Developer's general contractor to coordinate with Stormwater Management Utility for additional stormwater and detention requirements.

(c) **GCWW**: There are three inactive 5/8" lead water service branches (H-60456, H-30207 and H-18577) attached to portions of the Property. Because the existing water service branches are lead, these branches cannot be repurchased or reactivated. Developer must purchase new water service branches for these portions of the Property. Developer shall comply with all requirements of GCWW pertaining to water service for the Property, including without limitation the disconnection and abandonment of any water branches no longer needed, and

upgrading the water service to meet future fire and/or domestic water demands, at no cost to the City or GCWW, as more particularly described in CR #79-2019.

(d) Cincinnati Bell. There are existing underground telephone facilities at the City Sale Property. The existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as a result of this request will be handled entirely at the property owner's expense.

*SIGNATURE PAGE FOLLOWS*

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

**CITY OF CINCINNATI**

**756 E MCMILLAN, LLC**

By: \_\_\_\_\_  
Paula Boggs Muething, City Manager

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Alder, City Finance Director

For the exclusive purpose of acknowledging and agreeing to Section 3 hereof with respect to the terms and conditions pertaining to the City's waiver of the Incentive Recoupment Payment:

**739 E MCMILLAN ST, LLC**

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

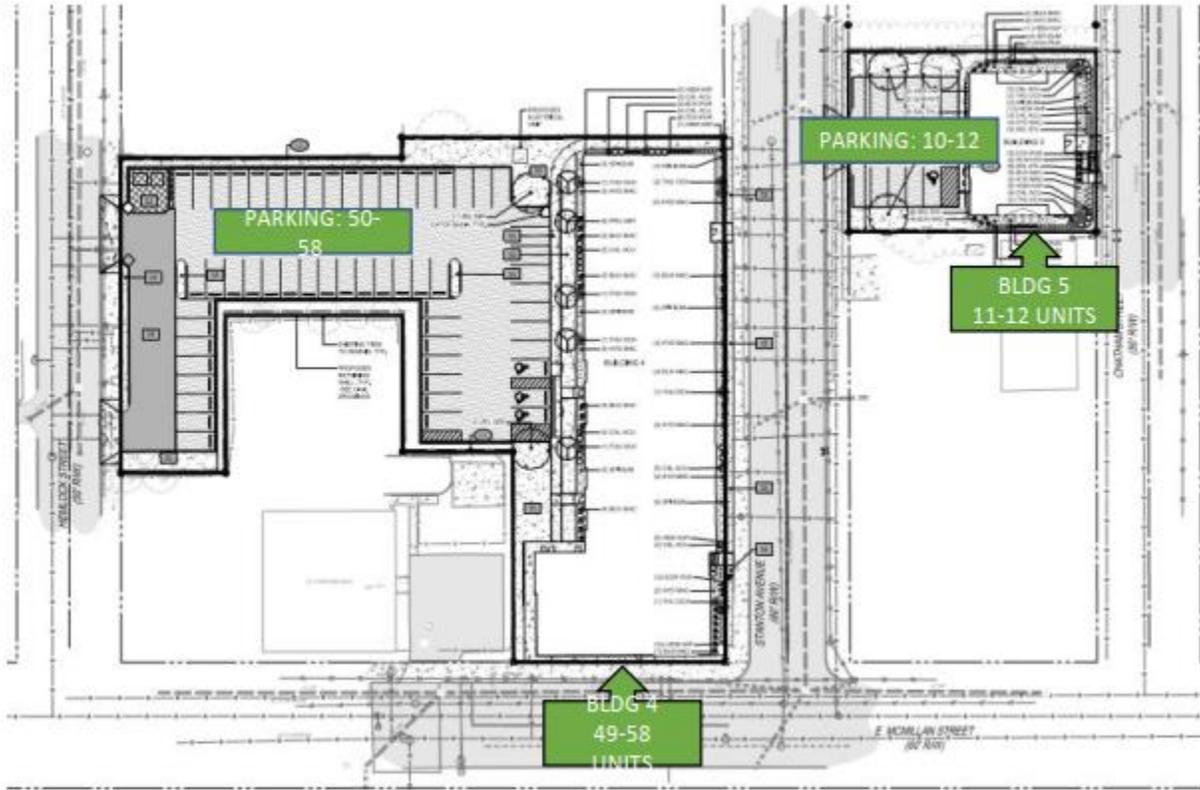
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

# EXHIBIT A

to Property Sale and Development Agreement

## SITE MAP



## EXHIBIT B

to Property Sale and Development Agreement

### SCOPE OF WORK; PRELIMINARY BUDGET; SOURCE OF FUNDS

#### I. Statement of Work

This project will result in the construction two buildings consisting of approximately 62 residential market rate, rental units as well as approximately 60 surface parking spaces. The cost of construction is estimated to be \$8 million and the total project cost is estimated be \$10.5 million.

#### II. Sources and Uses

##### Sources

Debt Financing	\$7,355,817
Equity	\$3,152,493
<b>Total Sources</b>	<b>\$10,508,310</b>

##### Uses

Land Purchase	\$262,000
Construction	\$8,000,000
Construction Management	\$40,000
Furniture, Fixtures & Equipment	\$65,000
Due Diligence	\$49,025
Applications & Permits	\$105,000
Legal	\$102,500
Engineering	\$56,200
Architectural	\$269,325
Accounting	\$9,822
Finance	\$438,748
Tax, Insurance & Utilities	\$108,526
Marketing	\$24,240
Other Development Costs	\$90,005
General Overhead	\$420,000
Contingency	\$467,920
<b>Total Uses</b>	<b>\$10,508,310</b>

**EXHIBIT C**

to Property Sale and Development Agreement

QUITCLAIM DEED

*SEE ATTACHED*

-----  
[SPACE ABOVE FOR RECORDER'S OFFICE]

### QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **756 E MCMILLAN, LLC**, an Indiana limited liability company, the address of which is [\_\_\_\_] ("**Developer**"), 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: 750, 752, and 758 E. McMillan Street, Cincinnati, OH 45202  
Auditor's parcels: 070-0002-0068-00, 070-0002-0069-00, and 070-0002-0070-00

Re-conveyance of Property to City for Failure to Timely Commence Construction. The City and Developer are parties to a *Property Sale and Development Agreement* dated \_\_\_\_\_, 2021 (the "**Development Agreement**"). As provided in the Development Agreement, if Developer fails to obtain a building permit and commence on-site construction at the Property on or before the date that is 90 days after the Target Construction Commencement Date (as defined in the Development Agreement), upon written request of the City, Developer shall re-convey the Property to the City free and clear of all liens and encumbrances, except those, if any, that were in existence immediately prior to the date and time of the Closing (as defined in the Development Agreement), as more particularly described in the Development Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Developer's written request, shall execute and deliver to Developer a release of such rights for recording in the Hamilton County, Ohio Records.

This conveyance was authorized by Ordinance No. \_\_\_\_-2021, passed by Cincinnati City Council on \_\_\_\_\_, 2021.

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

Executed on \_\_\_\_\_, 2021.

CITY OF CINCINNATI

By: \_\_\_\_\_  
Paula Boggs Muething, City Manager

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Paula Boggs Muething, City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. 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, OH 45202

Exhibit:  
Exhibit A – *Legal Description*

Exhibit A

Legal Description

[TO BE ATTACHED TO EXECUTION VERSION]

**EXHIBIT D**

to Property Sale and Development Agreement

COMPLETION GUARANTY

*SEE FOLLOWING PAGE*

## COMPLETION GUARANTY

This Completion Guaranty (“**Guaranty**”) is made as of the Effective Date (as defined on the signature page hereof) by [\_\_\_\_], the address of which is [\_\_\_\_\_] (“**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 and **756 E MCMILLAN, LLC**, an Indiana limited liability company (“**Developer**”, being an affiliate of Guarantor), are parties to a *Property Sale and Development Agreement* dated \_\_\_\_\_, 2021 (the “**Agreement**”). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Agreement.

B. Pursuant to the Agreement, (i) the City is selling to Developer the City-owned property located at 750, 752, and 758 E. McMillan Street in Cincinnati, and (ii) Developer is obligated to complete a mixed-use development of the property, as more particularly described in the Agreement (defined therein as the “**Project**”).

C. It is a condition of the Agreement that Guarantor provide this Guaranty to the City with respect to the 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 Developer of Developer’s obligations under the Agreement to complete the Project in accordance with, and subject to, the terms and conditions of the Agreement, including payment to the City of any and all losses, damages and expenses (including without limitation attorneys’ fees) suffered or incurred by the City and arising out of the failure by Developer 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 Developer fails to fulfill Developer’s obligations under the Agreement to complete the Project, resulting in a notice of default from the City to Developer under the Agreement, and the City intends to enforce this Guaranty as a result of such default, the City shall notify Guarantor thereof in writing, whereupon Guarantor, within ten (10) days after its receipt of such notice, shall take all steps necessary to cure the default (including, for example, providing additional funding for the Project if necessary); failing which the City shall have the right to demand that Guarantor repay to the City all previously disbursed Funds under the Agreement, payable within ten (10) days after the City’s written demand. 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. Notwithstanding the foregoing, no amendment to the Agreement materially expanding the scope of the Project shall be binding on the Guarantor unless it is approved in writing by Guarantor.

(C) The City may from time to time, 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 Developer; (iii) grant any extension or renewal of or with respect to the Agreement upon written agreement with Developer and/or effect any release, compromise or settlement in connection therewith; and (iv) deal in all respects with Developer 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 not of collection; (ii) shall not be conditioned or contingent upon the pursuit by Developer of any remedy that it may have against its contractors, subcontractors or any other person with respect to the 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 Developer or any other person; or (ii) otherwise to pursue or exhaust its remedies against Developer or any other person or entity or against the 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 Developer 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 Developer of any of their respective rights or interests under the Agreement or with respect to the 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 Developer, 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 Developer or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Developer.

(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 (except to the extent expressly provided for in this Guaranty); 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 Developer in performing any of Developer's obligations thereunder, Guarantor shall reimburse the City, upon demand, for any and all expenses, including without limitation attorneys' fees, that the City incurs in connection therewith, payable within ten (10) 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 Developer under the Agreement. Until Developer has paid and performed all of its obligations under the Agreement, Guarantor hereby waives

all rights of contribution, indemnity or subrogation with respect to Developer 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 Project; (ii) is duly organized, validly existing and in good standing under the laws of the [State of \_\_\_\_] and is authorized to do business in 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 Developer 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 Developer 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 thereof and shall remain in effect until such time as Developer completes the Project, as evidenced by a certificate of occupancy issued therefor by the City's Department of Buildings and Inspections. Upon issuance of such certificate of occupancy, this Guaranty shall terminate and be of no further force and effect.

*[Signature Page Follows]*

Executed as of \_\_\_\_\_, 2021 (the "Effective Date").

GUARANTOR:

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

This instrument prepared by:

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

## EXHIBIT E

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 Conferring with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which Developer receives City funds or other assistance (including, but not limited to, the City's construction of public improvements to specifically benefit the Project, or the City's sale of real property to Developer at below fair market value).

(b) Requirement. This Agreement may be subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that, if Developer receives City funds or other assistance, Developer and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Developer or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Developer and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than ten (10) days following Developer and/or its general contractor's meet and confer activity, Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor's meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to “construction contracts” under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority,” and “contract” as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

(b) Requirement. If CMC Chapter 321 applies to the Project, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

(iii) Competitive Bidding for Certain City-Funded Development Agreements.

(a) Applicability. Pursuant to Ordinance No. 273-2002, the provision in clause (b) below applies solely where the Project receives in \$250,000 or more in direct City funding, and where such funding comprises at least 25% of the Project’s budget. For the purposes of this clause (iii), “direct City funding” means a direct subsidy of City funds in the form of cash, including grants and forgivable loans, but not including public improvements, land acquisitions and sales, job creation tax credits, or tax abatements or exemptions.

(b) Requirement. This Agreement requires that Developer issue an invitation to bid on the construction components of the development by trade craft through public notification and that the bids be read aloud in a public forum. For purposes of this provision, the following terms shall be defined as set forth below:

- (1) “Bid” means an offer in response to an invitation for bids to provide construction work.
- (2) “Invitation to Bid” means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.
- (3) “Trade Craft” means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.
- (4) “Public Notification” means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the “scope of work” and any other information reasonably necessary for the

preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

(5) "Read Aloud in a Public Forum" means all bids shall be read aloud at the time, date and place specified in the invitation for bids, and the bids shall be available for public inspection at the reading.

(C) City Building Code. All construction work must be performed in compliance with City building code requirements.

(D) Lead Paint Regulations. All work must be performed in compliance with Chapter 3742 of the Ohio Revised Code, Chapter 3701-32 of the Ohio Administrative Code, and must comply with OSHA's Lead in Construction Regulations and the OEPA's hazardous waste rules. All lead hazard abatement work must be supervised by an Ohio Licensed Lead Abatement Contractor/Supervisor.

(E) Displacement. If the Project involves the displacement of tenants, Developer shall comply with all Government Requirements in connection with such displacement. If the City shall become obligated to pay any relocation costs or benefits or other sums in connection with the displacement of tenants, under Cincinnati Municipal Code Chapter 740 or otherwise, Developer shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City's written demand.

(F) Small Business Enterprise Program.<sup>1</sup>

(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:

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<sup>1</sup> 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.

- (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.

(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 15<sup>th</sup>. 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.

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*Addendum I*  
*to*  
*Additional Requirements Exhibit*  
City's Prevailing Wage Determination

*[TO BE ATTACHED TO EXECUTION VERSION]*