

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

**PROPERTY SALE, FUNDING, AND  
DEVELOPMENT AGREEMENT**

*between the*

**CITY OF CINCINNATI**

*and*

**101 WEST FIFTH LLC**

Project Name: 101 West 5th Street

(sale of City-owned real property and loan of City funds for a mixed-use development  
consisting of commercial space and office space)

Dated: \_\_\_\_\_, 2024

**PROPERTY SALE, FUNDING, AND DEVELOPMENT AGREEMENT**  
(101 West 5<sup>th</sup> Street)

This **PROPERTY SALE, FUNDING, AND DEVELOPMENT AGREEMENT** (this “**Agreement**”) is made as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”), and **101 WEST FIFTH LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 (“**Developer**”), an affiliate of **CINCINNATI CENTER CITY DEVELOPMENT CORPORATION**, an Ohio nonprofit corporation, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 (“**3CDC**”).

Recitals:

A. The City owns certain real property located at 101 West Fifth Street in the Central Business District of Cincinnati, which property is more particularly described on Exhibit A (Legal Description) hereto (the “**Property**”). The Property is under the management and control of the City’s Department of Community and Economic Development (“**DCED**”).

B. Developer desires to purchase the Property from the City and has proposed to redevelop the Property by completing all of the following (the “**Project**”):

- i. remodeling the existing vacant structure located thereon into approximately 62,000 square feet of renovated office space and approximately 13,000 square feet of renovated commercial space, at an estimated total project cost of approximately \$28,031,300, as more particularly described on Exhibit B-1 (Private Improvements – Scope, Budget, and Sources of Funds) hereto (the “**Private Improvements**”); and
- ii. completing various public infrastructure improvements, including, without limitation, demolition of the skywalk connecting the Property to the adjacent Carew Tower across Race Street, façade repair around the removed skywalk, and streetscape improvements, all as more particularly described on Exhibit B-2 (Public Infrastructure Improvements – Scope, Budget, and Sources of Funds) hereto (the “**Public Infrastructure Improvements**”).

C. The City’s Real Estate Services Division has determined, by professional appraisal, that the fair market value of the Property is approximately \$3,220,000 (the “**Fair Market Value**”); however, to facilitate the Project and promote its economic feasibility, the City is agreeable to selling the Property to Developer for less than the Fair Market Value; namely, for \$1.00, because the City will receive economic and non-economic benefits that equal or exceed the Fair Market Value of the Property because the City’s sale of the Property will eliminate the financial costs on the City to hold title to the Property and will allow Developer to focus the resources to bring the Property back into productive use.

D. Pursuant to Resolution No. 6-2022, approved by City Council on January 26, 2022, the Mayor and Council of the City expressed their support for the City to generate a comprehensive strategy for redevelopment of the Duke Energy Convention Center and the surrounding area generally bounded by Race Street, Central Avenue, 4<sup>th</sup> Street, and 6<sup>th</sup> Street (collectively, the “**District**”), including through the engagement of 3CDC for planning and management services related to the District.

E. The City, the Board of County Commissioners of Hamilton County, Ohio (the “**County**”), and 3CDC Development Manager, LLC (“**Manager**”), an affiliate of Developer and wholly owned subsidiary of 3CDC, entered into a certain *Development Management Services Agreement* dated June 14, 2023 (the “**Services Agreement**”), pursuant to which the City and the County engaged Manager to, among other things, provide general planning and development services as it relates to property within the District.

F. The City has determined that (i) the Property is not needed for a municipal purpose; (ii) the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents; (iii) the Project is in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; and (iv) it is in the best interest of the City to eliminate competitive bidding in connection with the City's sale of the Property because the Property is located in the District, and Developer, as an affiliate of 3CDC, is best positioned to complete the Project due to 3CDC's development activity in the District, comparable experience, and connections with local development and construction partners.

G. Pursuant to Ordinance No. [\_\_\_\_\_] -2024, passed by City Council on [\_\_\_\_\_] , 2024, the City created a so-called project-based TIF for the Property under Ohio Revised Code ("**ORC**") Section 5709.40(B), declaring the Improvement (as defined in ORC Section 5709.40) to the Property to be a public purpose and exempt from real property taxation for a period of 30 years (the "**Project TIF Ordinance**" and the "**Project TIF Exemption**", as applicable). As provided in the Project TIF Ordinance, the City shall not require Developer to pay service payments in lieu of taxes as described in ORC Section 5709.42 during the Project TIF Exemption.

H. The Board of Education of the Cincinnati City School District (the "**School Board**"), pursuant to an agreement with the City entered into on April 28, 2020, has approved exemptions of up to 100% of TIF projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.

I. Developer has entered or will enter into an agreement with the School Board requiring Developer to pay to the School Board 33% of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "**School Board Agreement**").

J. The Property is located in the tax increment financing district known as "District 2 – Downtown South/Riverfront District Incentive District" (the "**TIF District**"), established by Ordinance No. 412-2002, passed by City Council on December 18, 2002, pursuant to ORC Section 5709.40; however, the City amended the TIF District boundaries to remove the Property from the TIF District with the passage of the Project TIF Ordinance in order to create the Project TIF Exemption.

K. In addition to the sale of the Property and the Project TIF Exemption, Developer has requested a loan from the City to fund the Public Infrastructure Improvements and, in furtherance of the herein described public purposes and upon the terms and conditions set forth in this Agreement, the City desires to lend to Developer a loan from tax increment financing funds from the TIF District in the principal amount not to exceed \$2,000,000 (the "**Loan**"), to be utilized for the costs of the Public Infrastructure Improvements.

L. 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, and to make loans and to provide moneys for the acquisition, construction, enlargement, improvement or equipment of such property, structures, equipment, and facilities.

M. Developer estimates that the Project will create approximately (i) 120 full-time temporary construction jobs during the construction period with an approximate total annual payroll of \$6,000,000, and (ii) 130 permanent full-time equivalent jobs following completion of construction of the Project with an approximate annual payroll of \$5,900,000.

N. In recognition of the importance and value of including diversity, equity, and inclusion efforts for development projects within the District, the City, the County, and Manager developed a plan and established goals to maximize inclusion efforts within the District (the "**Inclusion Plan**"). In furtherance thereof, in completing the Project, Developer will ensure that all contractors, subcontractors, and consultants on the Project comply with the applicable provisions of the Inclusion Plan for a project of the size and scope of the Project and utilize best efforts to achieve participation at a level of 20% for minority-

owned business enterprises and 10% for women-owned business enterprises, with an additional aspirational reach goal of an additional 5% each.

O. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City's sale of the Property to Developer at its meeting on August 18, 2023.

P. Cincinnati City Council approved the City's sale of the Property to Developer and authorized funding for the Loan by Ordinance No. \_\_\_\_\_, passed on \_\_\_\_\_.

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

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

2. **Closing and Conditions to Closing.**

(A) **Due Diligence.** The Closing shall not occur unless and until each of the following conditions have been satisfied or waived in writing by the City, at the City's sole and absolute discretion (collectively, the "**Due Diligence Items**"); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Due Diligence Items would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Due Diligence Items in the Deed (as defined below) or handle such Due Diligence Items post-Closing:

(i) *Title Commitment:* Developer shall have delivered to the City a commitment of title insurance for the Property, for issuance of both an owner's policy and a lender's policy of title insurance, prepared by a reputable national title insurance company and in such form acceptable to the City, evidencing the title company's commitment to issue an Owner's Policy of Title Insurance to Developer and a Lender's Policy of Title Insurance to the City;

(ii) *Environmental Reports:* Developer shall have provided an environmental assessment report for the Property, starting with a Phase I assessment and including any additional assessments as may be required by the City's Office of Environment & Sustainability if appropriate, prepared by a qualified environmental professional in a form acceptable to the City;

(iii) *Developer Inspections:* Developer shall have determined from any inspections and investigations made pursuant to this Agreement, including marketing studies, traffic studies, feasibility studies, and any other studies and investigations related to the Property or the Project that Developer may elect to conduct or have conducted, that the Property and the conditions and circumstances surrounding the Property are suitable for development, construction, and use of the Project in an economically feasible manner;

(iv) *Financing:* Developer shall have delivered to the City a satisfactory loan commitment or letter from Developer's lender or other documentation evidencing that Developer has secured or will be able to secure all financing necessary to complete the Project;

(v) *Conceptual Drawings and Plans:* Developer shall have submitted conceptual drawings for the Project, followed by preliminary plans and specifications for the Project (the "**Preliminary Plans**") submitted to DCED and the City's Department of Transportation and Engineering ("**DOT**"), including, without limitation, a logistics plan for continued pedestrian

traffic along the south side of Fifth Street and the west side of Race Street, either through the public rights-of-way abutting the Property or through the Property itself, during construction (the “**Pedestrian Plan**”);

(vi) *Construction Schedule*: Developer shall have provided the proposed preliminary construction schedule for the Project;

(vii) *B&I Coordinated Report Conditions*: Developer shall have satisfied the conditions required by the City’s Department of Buildings and Inspections (“**B&I**”) set forth in the City’s Coordinated Report No. 43-2023;

(viii) *Payment and Completion Guaranty*: Developer shall have caused 3CDC to execute and deliver to the City the Guaranty (as defined below);

(ix) *Project Completion*: Based upon all information then available to the City, the City must be reasonably satisfied that Developer has attained or will attain all approvals and awards necessary to complete the Project; has made no false or misleading claims to the City regarding the Project; and is otherwise prepared, able, and ready to complete the Project in accordance with the requirements of this Agreement;

(x) *Continued Compliance*: Developer shall be in compliance with all obligations under this Agreement and all representations made by Developer under this Agreement or any other document executed between Developer and the City related to the Project shall continue to be true and accurate; and

(xi) *Other Information*: Developer shall have provided such other information and documents pertaining to Developer or the Project as the City may reasonably require.

All of the due diligence materials, investigations, and documents referred to in this paragraph (A) shall be performed and obtained, as the case may be, at no cost to the City.

(B) Developer’s Right of Entry.

(i) Pursuant to a *Right-of-Entry Agreement* dated August 2, 2023, and amended December 20, 2023, between the City and Developer (as amended, the “**ROE**”), the City authorized Developer to enter the Property to perform exploratory and non-structural demolition work. Prior to Closing, Developer may enter the Property pursuant to the terms of the ROE.

(ii) In the event the ROE is terminated prior to Closing, then prior to Closing and upon the City’s prior written authorization, to be provided in the City’s sole and absolute discretion, Developer may enter the Property during reasonable business hours to conduct tests and inspections related to the Project, *provided that* Developer must provide DCED at least 24 hours’ notice prior to entering the Property. Developer shall promptly repair any damage to the Property resulting from its inspections and Developer shall hold the City harmless from any loss or expense arising out of Developer’s activities on the Property. Entry shall be at the sole risk of Developer. DCED shall cooperate with Developer in Developer’s inspections, studies, and in obtaining all required approvals (it being acknowledged by Developer that the City makes no representations or assurances regarding the granting of any required approvals).

(C) Right to Terminate. If prior to Closing, either party determines, after exercising reasonable good faith efforts, that any of the Due Diligence Items and associated conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Due Diligence Items and associated conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred as of May 30, 2024, the City, in its sole and absolute discretion, may terminate this Agreement and all rights and obligations of the parties hereunder by giving written notice thereof to Developer.

(D) Closing Date. Subject to the terms and conditions of this Agreement, the purchase of the Property by Developer and the sale and conveyance of the Property by the City to Developer (the “**Closing**”) shall take place on March 20, 2024, or such earlier or later date upon which the parties mutually agree.

(E) Closing Costs and Closing Documents. At the Closing, (i) Developer shall pay the Purchase Price in full, (ii) the City shall deliver executed versions of the Title Clean-Up Documents (defined below), and (iii) the City shall convey all of its right, title, and interest in and to the Property to Developer by Quitclaim Deed substantially in the form of Exhibit C (Form of Quitclaim Deed) hereto (the “**Deed**”). Developer shall cause the payment of all conveyance fees, recording fees, title exam fees, title insurance premiums, settlement fees, and any and all other closing costs associated with the Closing, such that the City shall not be required to come up with any funds for the Closing. There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Developer and its successors-in-title shall pay all real estate taxes and assessments thereafter becoming due. At Closing, the parties shall execute a closing statement and any and all other customary closing documents that are necessary for the Closing (except that the City shall not be required to execute a title affidavit or the like). Except in the case of a foreclosure or deed in lieu of foreclosure, Developer shall not transfer title to the Property prior to the completion of construction without the City’s prior written consent. Pursuant to Cincinnati Municipal Code Section 301-20, at Closing, Developer shall cause to be paid to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed to the City by Developer or any of its affiliated entities. The provisions of this Agreement shall survive the City’s execution and delivery of the Deed and shall not be deemed to have been merged therein. “Title Clean-Up Documents” means the following:

- (i) Affidavit of Facts – Termination of Pogue Ingress Easement at Former Saks Building;
- (ii) Affidavit of Facts – Termination of the Saks Attachment Agreement;
- (iii) Termination of 4<sup>th</sup> and Race Easement.

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

(G) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Property that exists at or prior to the time of the City’s execution of this Agreement (herein, a “**Pre-existing Environmental Condition**”), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City or otherwise obtained by the City, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City’s Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, 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. The remediation and indemnity obligations of Developer under this paragraph shall survive the completion of the Project.

### **3. City Financial Assistance.**

(A) Amount of Loan; Eligible Uses. Subject to the terms and conditions of this Agreement, the City agrees to lend the Loan to Developer, and Developer agrees to borrow the Loan from the City. The Loan will be funds derived from the TIF District in an amount not to exceed \$2,000,000. The proceeds of the Loan (the “**Funds**”) shall be used solely to pay for costs of the Public Infrastructure Improvements as detailed on Exhibit B-2 (the “Eligible Uses”), and for no other purpose. For the avoidance of doubt, Developer shall not use any portion of the Funds to pay for the Private Improvements, for the purchase of

inventory, supplies, furniture, trade fixtures, or any other items of personal property, or to establish a working capital fund.

(B) Promissory Note. Prior to disbursement of the Loan, Developer shall execute a promissory note in the form of attached Exhibit D (*Form of Promissory Note*) hereto (the “**Note**”; this Agreement, the Mortgage, and the Guaranty (as defined below) and any and all other documents executed by Developer to evidence the Loan are referred to herein collectively as the “**Loan Documents**”). The Note shall be in the full amount of the Funds. The Note shall be executed by Developer and delivered to the City at Closing. Developer shall repay the Loan in accordance with the terms and conditions of the Note, as more particularly described therein. If Developer fails to timely complete any obligations with respect to the Project, as and when required under this Agreement or the Note, the City may declare all amounts of the Loan disbursed by the City to be immediately due and payable.

(C) Security. Prior to the disbursement of any Funds for the Project, Developer shall grant the City a mortgage on its interest in the Property substantially in the form of Exhibit E (*Form of Mortgage*) hereto (the “**Mortgage**”), as security for the Loan. Developer shall execute the Mortgage at Closing and record it in the real property records of Hamilton County, Ohio, all at Developer’s expense. Following recording, Developer shall deliver the recorded Mortgage to the City. The Mortgage shall be released only after the repayment of the Loan in accordance with the Note and upon Developer’s written request. Developer shall be responsible for recording the release in the Hamilton County Recorder’s Office, and all costs and expenses associated with the recording thereof. All rights and remedies of the City are cumulative, and the City shall be entitled to all other rights and remedies hereunder, under the Loan Documents, or available at law or in equity. The City acknowledges and agrees that the Mortgage shall be subordinated to any Project Debt and the City shall execute and deliver to Developer a subordination within 15 business days of a request from Developer. Notwithstanding the foregoing, the lien of the Mortgage and Developer’s obligations under this Agreement and the Note shall not be subordinate to, and the City shall not be required to subject its lien interest in the Property to, the lien of any financing or mortgage sought or obtained by Developer without the express written consent of the City.

(D) Disbursement of Funds. The Funds shall be disbursed in accordance with Exhibit F (*Disbursement of Funds*) hereto with proceeds to be utilized solely for the Eligible Uses. In no circumstances shall the City be obligated to disburse proceeds of the Loan in an amount in excess of the proceeds necessary to finance the Eligible Uses. After the Construction Commencement (as defined below) and throughout the duration of the Project, Developer shall forward to the City documentation for each proposed draw of construction financing simultaneously with Developer’s sending such draw to lenders on the Project for the City’s review. Upon request, Developer shall provide to the City written documentation demonstrating the proper use of the Funds for the Eligible Uses.

(E) Payment and Completion Guaranty. Developer shall cause 3CDC to execute and deliver to the City a guaranty of payment and completion with respect to Developer’s obligations regarding the Project, which shall be substantially in the form of the attached Exhibit G (*Form of Payment and Completion Guaranty*) hereto (the “**Guaranty**”).

(F) 30-Year Tax Exemption Pursuant to ORC Section 5709.40(B). The TIF Exemption shall be subject to and contingent upon, among other things, the execution and continued effectiveness of this Agreement and the Project TIF Ordinance. The City’s financial assistance shall be limited to providing the tax exemption in accordance with this Agreement. As between the City and Developer, Developer shall be solely responsible for, or shall require entities other than the City (and its associated boards, commissions, and other related entities) to pay, all costs associated with the Project. If any time the TIF Exemption, or the exemption from service payments in lieu of taxes described in the Project TIF Ordinance, is determined to be invalid or unlawful, the City shall be under no obligation to provide an alternative incentive, subsidy, or other assistance to Developer.

(G) No Other City Assistance. As a material inducement to the City to enter into this Agreement, Developer agrees that it shall not request or expect to receive any additional funding, real estate or income tax abatements, or other financial assistance from the City in connection with the Project in the future, either

for itself, for the benefit of the tenants or other occupants of the Property, or for the benefit of any other third party unless the City agrees to the contrary in writing.

#### **4. Commencement and Completion of Project; Repurchase Option for Failure to Commence Construction.**

(A) **Commencement and Completion of Construction.** Following Closing, Developer shall (i) (a) apply for and receive the required building permits from B&I for construction of the Project and all other permits and zoning approvals, as necessary, and (b) commence on-site construction of the Project in accordance with the Plans and Specifications (as defined below) (collectively, “**Construction Commencement**”) no later than May 30, 2024 (the “**Construction Commencement Date**”), (ii) complete construction of the Public Infrastructure Improvements (as evidenced by submission of a G704 for the Public Infrastructure Improvements) in accordance with the Plans and Specifications and all other City approvals (“**Public Infrastructure Construction Completion**”) no later than July 31, 2025 (the “**Public Infrastructure Construction Completion Date**”), (iii) complete construction of 70% of the leasable space in the Project as evidenced by a Certificate of Occupancy for 70% of the leasable space in the Project, in accordance with the Plans and Specifications and all other City approvals (“**Private Improvements Construction Completion**”) no later than July 31, 2028 (the “**Private Improvements Construction Completion Date**”), and (iv) complete construction of the Project (as evidenced by issuance of Certificate(s) of Occupancy for the remainder of the Property) in accordance with the Plans and Specifications and all other City approvals (“**Project Completion**”) no later than July 31, 2030 (the “**Project Completion Date**”); *provided, however*, upon Developer’s written request and at the DCED Director’s sole and absolute discretion, the City may extend any or all of the Construction Commencement Date, the Public Infrastructure Construction Completion Date, the Private Improvements Construction Completion Date, or the Project Completion Date by up to 12 months by providing written notice to Developer. Under no circumstances shall Developer use insufficient funds as the justification for requesting an extension.

(B) **Pre-Construction Commencement Conditions.** Following Closing but prior to Construction Commencement, Developer shall have delivered to the City, in a form and substance acceptable to the City, unless waived by the City in its sole and absolute discretion, each of the following (collectively, the “**Pre-Construction Conditions**”); *provided, however*, that if the City, in its sole and absolute discretion, determines that one or more of the Pre-Construction Conditions would be more appropriately separated into Pre-Construction Conditions applicable only to the Public Infrastructure Improvements or the Private Improvements, the City may, if appropriate, permit such Pre-Construction Conditions to be satisfied after Construction Commencement.

- (i) *Final Plans and Specifications:* Developer shall have submitted its final plans and specifications for the Private Improvements and the Public Infrastructure Improvements, which shall be consistent with Exhibit B-1 and Exhibit B-2, respectively, and which shall include an update, if necessary, of the Pedestrian Plan, to DCED and DOTE and received approval of the same from DOTE (the “**Plans and Specifications**”). For clarity, Developer may begin demolition under its demo permit prior to approval of the Pedestrian Plan. Once the City has approved the Plans and Specifications, Developer shall not make any material changes thereto without the DCED Director’s prior written consent. Developer shall complete the Project in accordance with the Plans and Specifications;
- (ii) *Final Budget & Construction Contract:* Developer shall have submitted final construction bids and a final budget for construction of the Public Infrastructure Improvements and the Private Improvements and an executed copy of Developer’s construction contract with Developer’s general contractor for the Project;
- (iii) *Coordinated Report Conditions:* Developer shall have satisfied the conditions set forth in the City’s Coordinated Report No. 43-2023, including, without limitation, those conditions summarized in Section 13 below;



- (iv) *Skywalk Termination Agreement.* Prior to Developer's commencing demolition of the Carew Skywalk, Developer shall have provided to the City a copy of the fully executed *Release and Termination of Easements Agreement* for termination of the easements related to the Carew Skywalk, as defined in Exhibit B-2, in substantially the form as approved by the City; and
- (v) *Construction Schedule.* Developer shall have provided an updated construction schedule for the Project, if necessary.

(C) Repurchase Option. As memorialized in the Deed, if either (i) Developer has not provided evidence satisfactory to the City that Developer has closed or will close on construction financing and associated debt for the Project (the "**Notice of Financial Closing**") or (ii) Construction Commencement has not occurred on or before the Construction Commencement Date, then, at any time thereafter, the City shall have the option to repurchase the Property for the Purchase Price by limited warranty deed, free and clear of all liens and encumbrances except those, if any, that were in existence as of the date and time of the Closing (the "**Repurchase Option**"), exercisable by giving written notice thereof to Developer at any time after the Construction Commencement Date, but prior to the earlier of the date of Construction Commencement or the date of receipt of the Notice of Financial Closing. Upon written request by Developer and Construction Commencement occurring prior to notice that the City is electing to exercise the Repurchase Option, the City shall execute and deliver to Developer a recordable release, approved by Developer's title company, of the Repurchase Option within 10 business days of Developer's request. Upon written request by Developer and receipt of the Notice of Financial Closing prior to notice that the City is electing to exercise the Repurchase Option, the City shall execute and deliver to Developer's title company a recordable release of the Repurchase Option within 10 business days of Developer's request, to be held in escrow and released at Developer's financial closing.

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

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

(F) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, judicial orders, and other governmental requirements applicable to the Project, including, without limitation, those set forth on Exhibit H (Additional Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits, or other approvals from B&I, DOTE, other City departments, City Planning Commission, City Council, or any other governmental agency that may be required in connection with the Project.

(G) Inspection of Work. During construction at the Property, the City, its employees, and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations under this Agreement. If the City determines that the work is not in accordance with the City-approved plans and specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City

shall have the right, in its reasonable judgment and after giving Developer prior written notice thereof, to stop such work and order its replacement at Developer's expense (not to be paid for using the Funds).

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

(I) Reporting During Construction. Upon the City's request throughout construction, Developer shall provide the City with reports describing the status of the Project, including, without limitation, all monthly construction draw walk materials and information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. Developer shall submit a final report to the City upon completion of the Project, including, without limitation, the final G702-703, final lien waivers from all contractors, subcontractors, and final certificate(s) of occupancy. Notwithstanding anything to the contrary, the City's determination that Developer's timing or content of such reports is insufficient shall not be (i) deemed a default under this Agreement, nor (ii) considered a condition precedent to the City's obligations hereunder.

(J) 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 Project has been completed.

(K) Barricade Fees Payable to DOTE. Developer acknowledges that (i) Developer may be required to obtain a barricade permit and pay barricade fees to DOTE for the closure of any sidewalks and curb lanes of the adjacent street if and when construction necessitates such closures, and (ii) with many entities competing for space on City street, it is important that construction activities be limited to as little space and the shortest duration as possible and that all work be scheduled and performed to cause the least interruption to vehicular travel, bicyclists, pedestrians and businesses; therefore, DOTE shall have the right to evaluate Developer's need for a barricade throughout construction and, if at any time after consultation with Developer DOTE determines that a barricade is not needed, DOTE shall have the right to withdraw the permit. In consideration of the benefits afforded the City by the Project, the City agrees to waive a portion of such barricade fees but not the portion of the fee allocable to DOTE's direct costs for the cost of permit issuance, and for the actual time associated with issuing such permits and inspections associated with such issued permits.

(L) Diversity, Equity, and Inclusion. Developer shall follow and enforce Sections A, B, and D of the Inclusion Plan, including through following and enforcing the applicable provisions of the Compliance Plan and submitting the required monthly reports relating thereto, to ensure that Developer and all of its contractors, subcontractors, and consultants utilize best efforts to achieve the W/MBE Goals of 20% for MBEs and 10% for WBEs, with the additional Aspirational Goals of 5% each for MBEs and WBEs, for collective goals of 25% for MBEs and 15% WBEs (for the purposes of this paragraph (L) the terms "Compliance Plan", "W/MBE Goals", "MBEs", "WBEs", and "Aspirational Goals" shall have the meanings ascribed to them in the Services Agreement.

## **5. Annual Payment Amount; Sale Payment Amount.**

(A) Cash Distributions. 3CDC, as the sole member of Developer, may, in its sole and absolute discretion, take any distributions from Developer consistent with law and any other loan or financing documents. However, if Developer so desires to make a distribution to 3CDC, it shall split the cash it desires to distribute from Developer and distribute 40% of such amount to the City (the "**Distribution Amount**"),

included with a report to the City detailing the distributions made to members of Developer (the “**Distribution Report**”).

(B) Net Revenue. Regardless of whether Developer is making any distributions of cash, it shall pay to the City 40% of the annual “Net Revenue” of Developer, if any (the “**Net Revenue Payment**”). Not later than April 1 of each year, Developer shall (i) submit a financial report outlining all revenue of Developer, all Cash Distributions if any, all Operating Costs, and all Net Revenue from the prior fiscal year (the “**Revenue Report**”), and (ii) the Net Revenue Payment to the City, if any. The City will review the Revenue Report within 30 days of receipt. If the City has questions, it shall provide those questions to Developer and Developer shall have 30 days from the date of receiving notice of the same from the City to (i) if necessary, revise the Revenue Report to answer the City’s questions and provide any additional information reasonably requested, and if necessary, revise the Revenue Report to address such questions, and (ii) submit a revised or supplemental Net Revenue Payment if necessary.

(C) Sale of Property by Developer. In the event Developer sells the Property, or any portion thereof, (“**Developer Sale**”), Developer shall pay to the City 40% of the Net Sale Proceeds (the “**Sale Payment**”), unless waived in writing by the City. This provision will not apply in the event of a foreclosure or deed in lieu of foreclosure.

- (i) *Sale Report and Sale Payment*. No later than the date 30 days after Developer Sale, Developer shall submit to the City a report calculating the Net Sale Proceeds (the “**Sale Report**”), provide all documentation as requested by the City to document the Net Sale Proceeds, and provide the Sale Payment to the City. Within 30 days of receipt of a Sale Report, the City will review the Sale Report. If the City has questions, it shall provide those questions to Developer and Developer shall have 30 days from the date of receiving notice of the same from the City to (i) if necessary, revise the Sale Report to answer the City’s questions and provide any additional information as requested and if necessary, revise the Sale Report, and (ii) submit a revised or supplemental Sale Payment if necessary.
- (ii) *Net Revenue Payment Upon Sale*. No later than the date 30 days after Developer Sale, Developer shall submit to the City the Revenue Report(s) for (i) the fiscal year in which Developer Sale occurred, and (ii) any prior fiscal years for which Developer has not yet provided a Net Revenue Payment, and Developer shall pay to the City the Net Revenue Payment(s) corresponding to such Revenue Report(s). The City will review the Revenue Report(s) within 30 days of receipt. If the City has questions, it shall provide those questions to Developer and Developer shall have 30 days from the date of receiving notice of the same from the City to (i) if necessary, revise the Revenue Report(s) to answer the City’s questions and provide any additional information as requested, and (ii) submit revised or supplemental Net Revenue Payment(s) if necessary.
- (iii) *Distribution Amount Upon Sale*. No later than the date 30 days after Developer Sale, Developer shall (i) pay to the City any Distribution Amount not yet paid and due to the City, and (ii) provide any Distribution Reports for the same.

(D) Definitions. As used in this Agreement:

- (i) “Net Revenue” means: all revenue of Developer from whatever sources, minus Operating Costs, Debt Costs, 3CDC Management Fee, Reserve Contributions, and any Additional Debt Payments Developer deems prudent in its sole and absolute discretion.

- (ii) "Operating Costs" means: all costs associated with the operation, maintenance, repair and replacement of structures on the Property, including without limitation charges for gas, electricity, water, sewer, telephone and all other utilities, insurance costs, real estate taxes, assessments, service payments, installments of assessments that become due and payable during the Term, management fees to any third-party operator or, if managed solely by 3CDC, all salaries and direct costs associated with such management, and all other costs that would generally be regarded in the industry as operating costs or expenses. Operating Costs do not include the 3CDC Management Fee or Debt Costs.
- (iii) "Debt Costs" means: all scheduled debt service for the Property, including administrative fees associated with any bonds or other debt.
- (iv) "3CDC Management Fee" means: up to 5% of Developer's gross revenue.
- (v) "Reserve Contributions" means: contributions to (1) any reserves required by lenders of Developer, including but not limited to OEBF, and (2) a Capital Repairs and Operating Reserve up to \$3,900,000.
- (vi) "Additional Debt Payments" means: any additional payments on outstanding debt for the Project Debt beyond scheduled debt service that Developer desires to make. For the avoidance of doubt, any additional payments for debt other than the Project Debt shall not be considered Additional Debt Payments for the purposes of this Agreement.
- (vii) "Net Sale Proceeds" means: the purchase price for the Property, or any portion thereof, less any amounts required to retire the outstanding debt associated with the Property, any real estate tax proration, transfer taxes, and any other costs associated with the closing on the Property or any portion thereof.
- (viii) "Project Debt" means: only the financing and associated debt identified in the Private Improvements Sources of Funds table in Exhibit B-1 and any additional financing or debt Developer deems reasonably necessary to complete the Project, including any refinancing of such debt, so long as Developer has provided appropriate notice to the City as follows:
  - a. In the event Developer desires to refinance the debt set forth in the table in Exhibit B-1, it shall notify the City at least 30 days in advance and may request that the City execute any documents reasonably necessary to effectuate such financing; and
  - b. In the event Developer desires to increase the total Project Debt by including any additional financing or debt Developer deems reasonably necessary to complete the Project, it shall notify the City and provide the City with the terms of such additional debt and an updated proforma for the Project. The City shall have 15 business days to review the information provided and raise any questions. Developer shall not increase the total Project Debt without the prior written consent of the Director of DCED, such consent not to be unreasonably withheld, conditioned, or delayed.

(E) Covenant to Make Sale Payment in Deed. The Deed will reflect the provisions of paragraph (C) hereof, including a prohibition on the sale, transfer, or conveyance of the Property, or any portion thereof, except upon payment of the Sale Payment that is due, so long as the sale, transfer, or conveyance of the Property (or portion thereof) is a Developer Sale.

**6. Insurance; Indemnity.**

(A) Insurance. Throughout construction, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$1,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured, (ii) builder's risk insurance in the amount of 100% of the value of the improvements to be constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's lenders for the Project, and (v) such other insurance as may be reasonably required by the City's Division of Risk Management. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days' prior written notice to the City. Within 10 days following execution of this Agreement, Developer shall send proof of all such insurance to DCED at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time.

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

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

**7. Casualty; Eminent Domain.** Unless otherwise required by Developer's lenders as set forth in the documents associated with the Project Debt and agreed to by the City in writing, with such written consent not to be unreasonably withheld, conditioned, or delayed, if the Property, or any improvements thereon made pursuant to the Project, 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 repair and restore the Property, as expeditiously as possible, and to the extent practicable, to substantially the same condition that existed immediately prior to such occurrence. If the available condemnation or insurance proceeds are insufficient to fully repair and restore the Property, the City shall not be required to make up the deficiency. Developer shall handle all construction or reconstruction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications for the improvements if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Project or the Property is being repaired or restored.

**8. Default; Remedies.**

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

(i) the failure by Developer or 3CDC to pay any sum payable to the City under this Agreement or the Note within 10 days of when such payment is due;

(ii) Prior to the expiration of the TIF Exemption (the “**Exemption Period**”):

- a. the dissolution of Developer, the filing of any bankruptcy or insolvency proceedings by Developer, or the making by Developer of an assignment for the benefit of creditors, or
- b. the filing of any bankruptcy or insolvency proceedings by or against Developer, the appointment of a receiver (temporary or permanent) for Developer, the attachment of, levy upon, or seizure by legal process of any property of Developer, or the insolvency of Developer, unless such appointment, attachment, levy, seizure or insolvency is cured, dismissed or otherwise resolved to the City’s satisfaction within 60 days following the date thereof; or

(iii) The occurrence of a Specified Default (as defined below), or a failure of Developer to perform or observe any obligation, duty, or responsibility under this Agreement or any other agreement to which Developer and the City are parties relating to the Project, and failure by Developer to correct such default within 30 days after Developer’s receipt of written notice thereof from the City (the “**Cure Period**”); *provided, however*, that if the nature of the default is such that it cannot reasonably be cured during the Cure Period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within such Cure Period and thereafter diligently completes such cure within 60 days after Developer’s receipt of the City’s initial notice of default. Notwithstanding the foregoing, if Developer’s failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City in good faith, an event of default shall be deemed to have occurred if Developer fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency. As used in this section, “**Specified Default**” means the occurrence of any of the following:

- a. Development Default. Developer (1) fails to (x) diligently prosecute the work related to the Project as provided herein, (y) complete the Project in accordance with Exhibit B-1, Exhibit B-2, and substantially in accordance with the Plans and Specifications, or (z) fails to comply with Sections 2 through 5 of this Agreement; or (2) abandons the Project.
- b. Misrepresentation. Any representation, warranty, or certification of Developer made in connection with this Agreement, or any other related agreements or documents shall prove to have been false or materially misleading when made (or, in the case of Developer’s representations in this Agreement, any representation or warranty ceases to be true and correct in all respects at any time during the TIF Exemption).
- c. School Board Agreement. Any failure by Developer to timely enter into the School Board Agreement or to comply with its obligations under the School Board Agreement.

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to (i) terminate this Agreement by giving Developer written notice thereof, (ii) take such actions in the way of “self-help” as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including without limitation attorneys’ fees, suffered or incurred by the City in connection with administration, enforcement, or termination of this Agreement or as a result of a default of Developer under this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty, or to pursue any remedy,

under this Agreement or any other agreement to which Developer and the City are parties relating to the Project shall not constitute a waiver of the breach of such covenant or of such remedy.

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

To the City:

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

To Developer:

101 West Fifth LLC  
1203 Walnut Street, 4th Floor  
Cincinnati, Ohio 45202

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

**10. Representations, Warranties, and Covenants.** Developer makes the following representations, warranties, and covenants to induce the City to enter into this Agreement (and Developer shall be deemed as having made these representations, warranties, and covenants again upon Developer's receipt of each disbursement of Funds):

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

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

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

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

(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 or its completion of the Project.

(vi) The statements made and information contained 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) With reference to Section 301-20 of the Cincinnati Municipal Code, neither Developer nor any of its affiliates are currently delinquent in paying any fines, penalties, judgments, water, or other utility charges, or any other amounts owed by them to the City.

(viii) Developer shall be solely responsible for filing such applications, documents, and other information with the appropriate officials of the State of Ohio and Hamilton County, or other public body as may be required to effect and maintain the TIF Exemption during the Exemption Period.

## **11. Reporting Requirements.**

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

(B) City's Right to Inspect and Audit. During construction and for a period of 3 years after completion of the Project, Developer shall permit the City and its employees, agents, 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.

## **12. General Provisions.**

### **(A) Assignment; Change of Control.**

(i) Assignment. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void. The City hereby consents to Developer's collateral assignment of its rights under this Agreement to any construction lender(s) related to the Project Debt; *provided, however*, the City may require the execution of an amendment hereto or other clerical documentation to effect such assignment or substitution of parties. Any such permitted assignment shall not act as a release of Developer, unless otherwise agreed to in writing by the City, and any prohibited assignment shall be void. If Developer does transfer any of its rights or interests under this Agreement to a third party, Developer must simultaneously assign the School Board Agreement to the transferee.

(ii) Change of Control. Developer (a) shall not permit a Change of Control (as defined below) prior to the completion of construction of the Project, and (b) shall provide the City with prompt written notice of any Change of Control following the completion of construction. As used herein, "Change of Control" means a change in the ownership of Developer such that 3CDC has less than a 50% direct or indirect voting interest in Developer and lacks the power to direct or cause the direction of the management and policies of



Developer, whether through the ownership of ownership interests in Developer, by contract, or otherwise.

(B) Entire Agreement. This Agreement (including the exhibits hereto) and the other documents and 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. If 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. In the event that any of the provisions of this Agreement are in conflict or are inconsistent, the provision determined by the City to provide the greatest legal and practical safeguards with respect to the use of the Funds and the City's interests in connection with this Agreement shall control.

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

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

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and 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 Third-Party Beneficiaries. No third-party beneficiary rights are intended to be created by this Agreement.

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

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

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

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

(M) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal

financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

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

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

**13. Coordinated Report Conditions**. Developer shall abide by the following additional conditions identified in the City's Coordinated Report No. 43-2023, unless and until each of the following additional conditions have been satisfied or waived in writing by the City, at the City's sole and absolute discretion:

(A) Stormwater: The inlet and short storm line on the southwest corner of West Fifth Street and Race Street must be properly relocated and reconnected to the nearby Metropolitan Sewer District sewer. The existing storm line must be properly filled, sealed, and abandoned.

(B) Greater Cincinnati Water Works ("GCWW"): Within the right of way of West Fifth Street, there exists a 12-inch public water main and related appurtenances. Within the right of way of Race Street, there exists a 12-inch public water main and related appurtenances. The Property is receiving water service via a 10-inch fire branch (Br. No. 259806) and 2-inch domestic service line (Mtr. No. 259806). Any damage caused to the public water system during construction must be repaired to GCWW's satisfaction entirely at the cost of Developer. If air lots are created at the Property, GCWW will require each lot to have its own domestic water service and an air lot covenant will need to be processed with GCWW and recorded. Developer acknowledges that the City is not liable for any damage to the façade of the Property that may occur as GCWW maintains or accesses the public water system and related appurtenances.

(C) Planning and Engagement: Developer acknowledges that office use is not permitted as a principal ground floor use in the Commercial Continuity Overlay in the Downtown Development district and that such use will require a locational variance if Developer decides to have office use as the principal ground floor use. All building permits and zoning relief necessary to complete the work will need to be approved for the change of occupancy.

(D) Duke Energy: Duke Energy has existing electric facilities currently located on the Property. Developer shall grant Duke Energy unrestricted ingress and egress to its facilities. No structures may be constructed within said utility area in conflict with the electric facilities located on the Property, nor may the utility area be physically altered so as to:

- a. Reduce the clearances of the facilities,
- b. Impair the ability to maintain the facilities, or
- c. Create a hazard to the utility's facilities.

Any party damaging said facilities shall be responsible for all costs and expenses associated with the repair or replacement of the same. If said existing electric facilities are to remain in the existing location, Developer shall grant an easement to Duke Energy at the Closing in substantially the form of Duke Energy's customarily used easement form.

(E) Parks Department: Developer must apply for and receive a Public Tree Work Permit ("**PTWP**") prior to commencing work within 15 feet of a public street tree. PTWP approval is conditional. If

work requires removal of street tree/s, compensation shall be made prior to any removal.

(F) Altafiber: There are existing underground telephone facilities at the Property, which must remain in place, in service, and able to be accessed. Any damage done to the existing facilities, or any work done to relocate the existing facilities, will be at the sole expense of Developer.

**14. TIF Agreements; Fees, Payments, And Expenses; Termination.**

(A) Initial Administrative Fee. Developer represents and warrants to the City that it has paid or otherwise shall pay within 10 days following the execution of this Agreement a non-refundable administrative fee of \$15,000 to cover the City's out-of-pocket and administrative costs and expenses in establishing the TIF Exemption, preparing this Agreement and other documents relating hereto, and effecting the transactions contemplated hereby.

(B) School Board Agreement. Promptly following passage of the Project TIF Ordinance and in accordance with the City's Agreement with the School Board, Developer shall enter into the School Board Agreement with the School Board, which will require that Developer pay to the School Board 33% of the full amount of exempt real property taxes that would have been paid if the TIF Ordinance were not in effect.

(C) Monitoring and Servicing Fee. Developer shall pay to the City an annual monitoring and servicing fee equal to \$500 or 1% of the annual taxes exempted under the Project TIF Ordinance, whichever is greater, but not to exceed \$2,500 per annum. Such fee shall be due and payable to the City's Finance Department on or before March 31 of each year, commencing in the initial year in which property value is exempted under the TIF Exemption and continuing until the expiration of the TIF Exemption.

(D) Termination of the TIF Exemption. Developer hereby acknowledges and agrees that upon the occurrence of an event of default under this Agreement, the City may terminate the TIF Exemption if the City determines, in its sole and absolute discretion, that the TIF Exemption is no longer serving a valid public purpose. Developer hereby waives any and all claims that Purchaser may have against the City in relation to any such termination.

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

Exhibit A – *Legal Description*

Exhibit B-1 – *Private Improvements – Scope, Budget, and Sources of Funds*

Exhibit B-2 – *Public Infrastructure Improvements – Scope, Budget, and Sources of Funds*

Exhibit C – *Form of Quitclaim Deed*

Exhibit D – *Form of Promissory Note*

Exhibit E – *Form of Mortgage*

Exhibit F – *Disbursement of Funds*

Exhibit G – *Form of Payment and Completion Guaranty*

Exhibit H – *Additional Requirements*

[SIGNATURES ON FOLLOWING PAGE]

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

**CITY OF CINCINNATI,**  
an Ohio municipal corporation

By: \_\_\_\_\_  
Sheryl M. M. Long, City Manager

Date: \_\_\_\_\_, 2024

**101 WEST FIFTH LLC,**  
an Ohio limited liability company

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

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

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

Date: \_\_\_\_\_, 2024

Authorized by resolution dated \_\_\_\_\_.

Approved as to Form:

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

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

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

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

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

Exhibit A  
to Property Sale, Funding, and Development Agreement

*Legal Description*

Property Address: 101 West 5th Street, Cincinnati, Ohio 45202

Auditor Parcel ID No.: 145-0001-B215-00, 145-0001-A215-00, 145-0001-0215-00

Situate, lying and being in Section 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being part of In Lots 265, 266, 267, 290, 291 and 292 by Israel Ludlow and Joel Williams as recorded in Deed Book E-2, Pages 66 and 67 Hamilton County, Ohio Recorder's Office, and being more particularly described as follows:

From the intersection of the South line of Fifth Street (now a 76-foot street) and the east line of Elm Street (now a 76-foot street) (as Fifth Street and Elm Street were widened by Ordinance No. 366-1985 of Cincinnati City Council, passed August 7, 1985); thence continuing along the south line of Fifth Street as widened North 81° 14' 40" East for a distance of 192.69 feet to the Place of Beginning; thence continuing along the south line of Fifth Street as widened North 81° 14' 40" East for a distance of 196.00 feet to the intersection of the south line of Fifth Street as widened and the west line of Race Street (now a 68 foot street as widened by the above Ordinance No. 366-1985); thence along the west line of Race Street as widened South 8° 58' 50" East for a distance of 234.36 feet to a point in a line 154.00 feet north of and parallel with the north line of Fourth Street (a 66 foot street); thence along said line South 81° 11' West for a distance of 196.92 feet to a point in a line perpendicular to the south line of Fifth Street as widened at a point in the south line 196.00 feet West of Race Street as widened; thence along said perpendicular line North 8° 45' 20" West for a distance of 234.57 feet to the Place of Beginning.

Containing an area of 46,063 square feet, more or less.

Exhibit B-1  
to Property Sale, Funding, and Development Agreement

*Private Improvements – Scope, Budget, and Sources of Funds*

**I. Scope of Private Improvements**

Developer shall remodel the existing vacant structure located on the Property into approximately 62,000 square feet of renovated single-tenant office space and approximately 13,000 square feet of renovated commercial space.

**II. Private Improvements Budget**

	<b>Core/Shell &amp; TI</b>	<b>Bond Refinance</b>	<b>TOTAL</b>
<b>Hard Construction Costs</b>			
Core & Shell + Landlord work	\$12,273,581		\$12,273,581
Tenant Improvement Allowance	\$8,877,679		\$8,877,679
Landlord FF&E	\$65,000		\$65,000
<b>Hard Construction Costs Subtotal</b>	<b>\$21,216,260</b>	<b>\$0</b>	<b>\$21,216,260</b>

<b>Soft Costs</b>			
Architecture/Engineering	\$806,310		\$806,310
Permits and Tap Fees	\$37,000		\$37,000
Insurance	\$60,000		\$60,000
Utilities	\$75,000		\$75,000
Construction Testing	\$10,000		\$10,000
Construction Inspections	\$28,000		\$28,000
Professional Fees	\$77,000		\$77,000
Real Estate Tax	\$242,627		\$242,627
Title & Recording Fees	\$80,000		\$80,000
Legal Fees	\$199,250	\$50,000	\$249,250
Leasing / Broker Fees	\$503,018		\$503,018
Marketing & Signage	\$5,000		\$5,000
Historic Tax Credit Fees			\$0
NMTC CDE Fees			\$0
NMTC Reserves			\$0
Tax Credit Reasonableness Opinions			\$0
Condo Fees			\$0
Financing Fees	\$242,400		\$242,400
Construction Interest	\$433,307		\$433,307
Debt Service Reserve	\$1,037,500		\$1,037,500
Operating Reserve			\$0
Contingency	\$1,087,328		\$1,087,328
Project Administration Fee	\$1,000,000		\$1,000,000
Bond Costs of Issuance		\$338,800	\$338,800

Additional Net New Reserves for Refi		\$502,500	\$502,500
<b>Soft Costs Subtotal</b>	<b>\$5,923,740</b>	<b>\$891,300</b>	<b>\$6,815,040</b>

<b>TOTAL</b>	<b>\$27,140,000</b>	<b>\$891,300</b>	<b>\$28,031,300</b>
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### III. Private Improvements Sources of Funds

	Core/Shell & TI	Bond Refinance	TOTAL
Construction Loan	\$12,500,000	(\$12,500,000)	\$0
Cincinnati Equity Fund III	\$9,640,000	(\$2,008,700)	\$7,631,300
Ohio Enterprise Bond Fund		\$15,400,000	\$15,400,000
Jobs Ohio	\$5,000,000		\$5,000,000
<b>TOTAL</b>	<b>\$27,140,000</b>	<b>\$891,300</b>	<b>\$28,031,300</b>

The parties may elect to revise this Exhibit through a letter signed by both the City and Developer.

Exhibit B-2  
to Property Sale, Funding, and Development Agreement

*Public Infrastructure Improvements – Scope, Budget, and Sources of Funds*

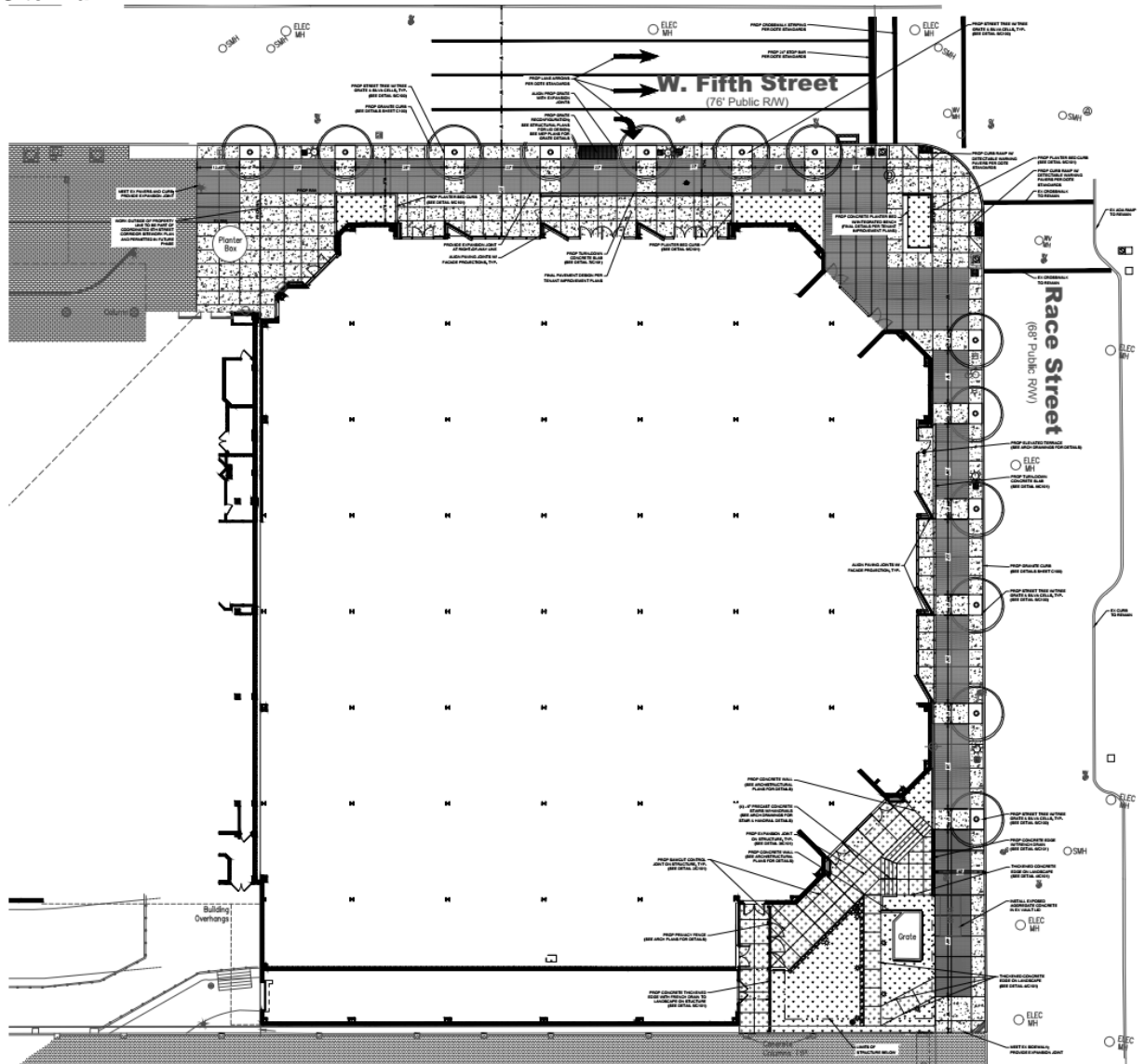
**I. Scope of Public Infrastructure Improvements**

Developer shall complete the following:

- Skywalk demolition: removal of the existing skywalk bridge that connects the Property to the Carew Tower across Race Street (the “**Carew Skywalk**”).
- Carew Tower repairs: restore the façade and board up the interior of the Carew Tower following removal of the skywalk bridge.
- Streetscape rehabilitation:
  - Sidewalks: removal and replacement of all sidewalks bordering the Property on Race Street and Fifth Street. Additionally, Developer will extend the sidewalk into the south-most right turn lane on Fifth Street.
  - Curbs: granite curbs to be installed with new sidewalks described above.
  - Traffic pole: Replace the boom traffic pole on Fifth Street
  - Lighting: New street lights and poles to be installed.
  - Tree grates and wells: New street trees, silva cells, and tree grates will be installed.
  - Fire hydrant: Relocation of fire hydrant to new curb edge on Fifth Street.
  - Removal of midblock crossing and pedestrian signal on Race Street.
- Façade selective work: Select removal and replacement of façade at former skywalk in advance of new work that ensures long-term stability and safety of the former skywalk area.
- Contractor general conditions, general requirements, and fee: Proportional share of the Public Infrastructure Improvements of the Contractor’s total direct costs for the Project.
- Soft costs: Includes but is not limited to civil engineering fees, architecture fees, surveying, and lane closure permits, related to the Public Improvements.



## Site Plan



## II. Public Infrastructure Improvements Budget

Skywalk demolition	\$217,100
Carew Tower repairs	\$228,900
Streetscape rehabilitation	\$910,200
Façade selective work	\$160,600
Contractor general conditions, general requirements, and fee	\$295,000
Soft costs	\$160,800
Contingency	\$27,400
<b>TOTAL</b>	<b>\$2,000,000</b>

**III. Public Infrastructure Improvements Sources of Funds**

City TIF Loan	\$2,000,000
<b>TOTAL</b>	<b>\$2,000,000</b>

The parties may elect to revise this Exhibit to reallocate Funds between budget line items through a letter signed by both the City and Developer. However, in no event will the City add any additional funds for the Public Infrastructure Improvements. In the event of cost overruns, it shall be Developer's responsibility to complete the Public Infrastructure Improvements.

Exhibit C  
to Property Sale, Funding, and Development Agreement

*Form of Quitclaim Deed*

SEE ATTACHED

**QUITCLAIM DEED**

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration, hereby grants and conveys to the **101 WEST FIFTH LLC**, an Ohio limited liability company, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 ("**Grantee**"), all of the City's right, title, and interest in and to the real property described on Exhibit A (*Legal Description of Property*) hereto (the "**Property**").

Property Address: 101 West 5th Street,  
Cincinnati, Ohio 45202

Auditor's Parcel No.: 145-0001-B215-00, 145-0001-A215-00, 145-0001-0215-00

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

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

This conveyance is subject to all covenants, conditions, reservations, or easements of record. Also, this conveyance is subject to the reservations, easements, covenants, and restrictions set forth below. Grantee, its successors, and assigns shall forever hold, develop, encumber, lease, occupy, improve, build upon, use, and convey the Property subject to such reservations, easements, covenants, and restrictions, which shall "run with the land" and be binding upon Grantee and its successors-in-interest with respect to the Property.

1. Re-conveyance to City: The City and Grantee are parties to a *Property Sale, Funding, and Development Agreement* dated \_\_\_\_\_, 2024 (the "**Agreement**"). Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Agreement. Pursuant to the terms of the Agreement, Grantee is required to redevelop the Property. If Grantee does not (a) commence construction at the Property on or before the Construction Commencement Date (as defined in the Agreement) in accordance with the Agreement or (b) provide evidence satisfactory to the City that Grantee has closed or will close on construction financing and associated debt for the Project (as defined in the Agreement) on or before the Construction Commencement Date (as defined in the Agreement) in accordance with the Agreement, the City has the right to reacquire the Property as described in the Agreement. At such time as the City no longer has the right to reacquire the Property under the Agreement, the City, at Grantee's request, shall execute and deliver to Grantee, or Grantee's title company to be held in escrow and released pursuant to the terms of the Agreement, a release of such rights for recording in the Hamilton County, Ohio Recorder's Office. Until such time as the Property has been reconveyed to the City or the City has released

or waived its rights to reacquire the Property thereunder, Grantee shall not sell or otherwise transfer title to the Property or any portion thereof without the prior written consent of the City.

2. Covenant Not to Sell, Transfer, or Convey: Except in the event of a foreclosure or deed in lieu of foreclosure, the Property shall not be sold, transferred, or conveyed except in circumstances in which Developer simultaneously pays the Sale Payment and otherwise complies or has complied with the terms and conditions of [Section 5(C)] of the Agreement. The parties hereby agree and acknowledge that this covenant (a) is a covenant running with the land and shall be binding upon Grantee and its successors-in-title, (b) is not merely a personal covenant, and (c) shall bind Grantee and its successors and inure to the benefit of the City. Grantee and its successors-in-title agree that any and all requirements of the laws of the State of Ohio to be satisfied in order for the provisions of this covenant to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full, and any requirements of privity of estate or privity of contract shall also be deemed to be satisfied in full.

*[Signature Page Follows]*

Executed on the date of acknowledgement below.

**CITY OF CINCINNATI**

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

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

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

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_ the \_\_\_\_\_ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Approved as to Form:

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

This instrument prepared by:

City of Cincinnati Law Department  
801 Plum Street, Suite 214  
Cincinnati, Ohio 45202

Exhibit:  
Exhibit A – Legal Description of Property

Exhibit A  
to Quitclaim Deed

*Legal Description of Property*

[TO BE ATTACHED TO EXECUTION VERSION OF DEED]

Exhibit D  
to Property Sale, Funding, and Development Agreement  
*Form of Promissory Note*

SEE ATTACHED



**PROMISSORY NOTE**  
(0% interest rate)

**\$2,000,000.00**

Cincinnati, Ohio

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

**FOR VALUE RECEIVED**, the undersigned, **101 WEST FIFTH LLC**, a limited liability company organized under the laws of the State of Ohio, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 (“**Borrower**”), hereby promises to pay to the order of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for the purposes of this Promissory Note (this “**Note**”) is 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Director, Department of Community and Economic Development (the “**City**”), the principal sum of Two Million and 00/100 Dollars (\$2,000,000.00) or so much thereof as the City disburses to Borrower pursuant to that certain *Property Sale, Funding, and Development Agreement* between the City and Borrower, dated \_\_\_\_\_ (the “**Agreement**”), together with interest, if any, as described below (the “**Loan**”). Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Agreement.

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

- (a) Amount: The principal and amount of the Loan evidenced by this Note is Two Million and 00/100 Dollars (\$2,000,000.00).
- (b) Term: The term of the Loan shall be 30 years, beginning on the date of this Note (the “**Effective Date**”), and ending on the 30th anniversary thereof (the “**Maturity Date**”).
- (c) Interest Rate: Interest shall accrue on the unpaid principal balance of the Loan at 0.00% per annum. Interest shall begin to accrue upon disbursement of Loan proceeds.
- (d) Payments: Borrower shall repay the Loan to the City as follows:
  - [i] Payment Deferral: All payments on amounts due under the Loan shall be deferred until the Maturity Date.
  - [ii] Forgiveness: Upon Borrower providing documentation that the Project has been completed (as evidenced by the submission of a G704 for the Public Infrastructure Improvements and Certificate(s) of Occupancy for at least 70% of the leasable space on the Property) and so long as Borrower is then and has continually been in compliance with all requirements of the School Board Agreement, this Note, and the Agreement, then the City agrees to forgive 100% of the outstanding principal balance of the Loan. Upon request by Borrower, the City will provide written confirmation of such compliance and forgiveness and a release of the Mortgage.
  - [iii] Balloon Payment: On the Maturity Date, Borrower shall make a balloon payment equal to all unpaid and unforgiven principal, interest (if any), and other charges outstanding on the Loan.
- (e) Acceleration: If Borrower fails to make any payment hereunder when due or otherwise defaults under this Note or the Agreement, then the City shall have the right to declare the entire outstanding principal balance of this Note and all accrued interest and other charges thereon to be immediately due and payable.
- (f) Prepayment: Borrower may prepay the Loan and accrued interest at any time, without penalty.

- (g) Default Rate of Interest; Late Charges: If any payment due hereunder is not received by the City when due, a late charge equal to 5% of the past due amount shall automatically become due, and interest on the past due amount shall accrue from the due date at the rate of 12% per annum until the entire past due amount has been paid. The foregoing is in addition to the City's other rights and remedies hereunder and under the Agreement in the event of a default.
- (h) Due on Sale: Notwithstanding the Maturity Date specified herein, the entire outstanding principal balance and all accrued interest shall automatically become due and payable in full upon the sale of all or any portion of the Property, unless such sale is otherwise authorized by the City in writing in accordance with the Agreement.
2. **Authority.** The officer or representative of Borrower subscribing below represents that s/he has full power, authority, and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower.
3. **Place of Payment.** Payments due under this Note shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to the City at the address set forth in the introductory paragraph of this Note or such other place as the City may designate in writing from time to time.
4. **Borrower's Waivers.** Borrower waives presentment, demand for payment, notice of non-payment, notice of dishonor, protest, notice of protest, and all suretyship type defenses.
5. **Default.** Upon any default under the Agreement or default in the payment of interest, principal, or any other sum when due under this Note that is not cured within five (5) days after Borrower is given written notice thereof, the entire principal sum hereof and accrued and unpaid interest hereon may, at the option of the Note holder, be declared to be immediately due and payable, time being of the essence, and the Note holder may proceed to enforce the collection thereof by suit at law or in equity. If suit is brought to collect this Note, the Note holder shall be entitled to collect, and Borrower shall indemnify the Note holder against, all expenses of suit, including, without limitation, attorneys' fees. Failure of the Note holder to exercise its rights under this Note in the event of default shall not constitute a waiver of the right of the holder to exercise the same or to exercise such rights in the event of a subsequent default.
6. **General Provisions.** This Note and any and all ancillary documents executed by Developer in connection with the Loan constitute the entire agreement of the parties with respect to the matters described herein and supersede any and all prior communications and agreements between the parties. This Note may be amended only by a written amendment signed by Borrower and the Note holder. This Note shall be governed by the laws of the City of Cincinnati and the State of Ohio. This Note shall be binding upon Borrower and its successors and assigns. If any provision of this Note is determined to be in violation of any applicable local, state or federal law, such provision shall be severed from this Note and the remainder of this Note shall remain in full force and effect. All notices given under this Note shall be sent by regular or certified U.S. mail to Borrower at its address set forth above, and to the Note holder at the address where loan payments are made. Any action or proceeding arising under this Note shall be brought only in the Hamilton County Court of Common Pleas.

*SIGNATURE PAGE FOLLOWS*

Executed by Borrower on the date first above written.

**BORROWER:**

**101 WEST FIFTH LLC**

an Ohio limited liability company

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

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

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

Approved as to Form:

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

cc: Karen L. Alder, City Finance Director

Exhibit E  
to Property Sale, Funding, and Development Agreement

*Form of Mortgage*

SEE ATTACHED

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

### MORTGAGE

The undersigned, **101 WEST FIFTH LLC**, an Ohio limited liability company, 1203 Walnut Street, 4<sup>th</sup> Floor, Cincinnati, Ohio 45202 ("**Borrower**"), in consideration of a loan in the principal amount of \$2,000,000 made by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), to Borrower, as evidenced by Borrower's promissory note of even date herewith (as the same may be amended, restated, or replaced from time to time, the "**Note**"), hereby grants, with mortgage covenants, to the City the real property described on Exhibit A (Legal Description) hereto (the "**Property**").

Property Address: 101 West 5th Street, Cincinnati, Ohio 45202

Auditor's Parcel Nos.: 145-0001-B215-00, 145-0001-A215-00, 145-0001-0215-00

Prior Instruments: OR \_\_\_\_\_, Page \_\_\_\_\_, Hamilton County, Ohio Records.

This Mortgage is given, upon the statutory condition, to secure the payment and performance of all obligations of Borrower under the Note, that certain *Property Sale, Funding, and Development Agreement* dated \_\_\_\_\_, and any and all ancillary loan documents executed by Borrower in favor of the City in connection therewith.

*[Signature page follows]*

This Mortgage is executed on the date of acknowledgement set forth below.

**101 WEST FIFTH LLC**

an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_, the \_\_\_\_\_ of 101 WEST  
FIFTH LLC, an Ohio limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Approved as to Form

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

This instrument prepared by:  
City of Cincinnati Law Department  
801 Plum Street, Suite 214  
Cincinnati, Ohio 45202

Exhibit:  
Exhibit A – Legal Description

Exhibit A  
to Mortgage

*Legal Description*

[TO BE ATTACHED TO EXECUTION VERSION OF MORTGAGE]

Exhibit F  
to Property Sale, Funding, and Development Agreement

*Disbursement of Funds*

(A) Conditions to be Satisfied Prior to Disbursement of Funds. The City shall be under no obligation to disburse the Funds unless and until the following conditions are satisfied and continue to be satisfied:

(i) Developer has provided the City with the executed Guaranty, the executed Note, a copy of the executed and recorded Mortgage, and a copy of the executed School Board Agreement;

(ii) Developer has provided the City with evidence of insurance required under this Agreement;

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

(iv) Developer has provided the City with evidence that Developer has secured all other funds necessary to complete the Project;

(v) The City has approved of the Due Diligence Items and construction shall have commenced and be proceeding in accordance with the City-approved plans and specifications, budget, and construction schedule;

(vi) Developer has provided to the City such other information and documents pertaining to Developer or the Project as the City may reasonably require; and

(vii) Developer is not in default under this Agreement in full compliance with all requirements under this Agreement, the Note, the Mortgage, and the Guaranty.

(B) Disbursement of Funds. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall disburse the Funds to Developer, to be used solely for the Eligible Uses. The City shall disburse the Funds on a reimbursement basis. Developer shall not be entitled to a disbursement of Funds to pay for costs incurred prior to February 1, 2023. Developer shall request the Funds and shall use the Funds solely for the purposes permitted under the Agreement. Nothing in this Agreement shall permit, or shall be construed to permit, the expenditure of Funds for the acquisition of supplies or inventory, or for the purpose of purchasing materials not used in the construction, or for establishing a working capital fund, or for any other purpose expressly disapproved in writing by the City. Developer shall not request a disbursement of Funds for any expenditure that is not itemized on or contemplated by the approved budget or if the costs for which the disbursement is being requested exceeds the applicable line item in the budget; however, Developer may request, in writing, that funds be transferred between line items, with the City's approval thereof not to be unreasonably withheld. Disbursements from the project account shall be limited to an amount equal to the actual cost of the work, materials, and labor incorporated in the work up to the amount of such items as set forth in Developer's request for payment. Anything contained in this Agreement to the contrary notwithstanding, the City shall not be obligated to make or authorize any disbursements from the project account if the City determines, in its reasonable discretion, that the amounts remaining from all funding sources with respect to the Project are not sufficient to pay for all the costs to complete construction. Developer acknowledges that the obligation of the City to disburse the Funds to Developer for construction shall be limited to the Funds to be made available by the City under this Agreement. Developer shall provide all additional funds from other resources to complete the Project. Notwithstanding anything in this Agreement to the contrary, the City's obligation to make the Funds available to Developer, to the extent such Funds have not been disbursed, shall terminate 30 days following completion of construction of the Project.



(C) Draw Procedure

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

(ii) Documentation. Each disbursement request shall include the following: For construction costs shown on the approved budget, Developer shall submit a draw request form provided by the City, with the following attachments: (i) an AIA G-702-703 Form (AIA) or such other similar form acceptable to the City; (ii) sworn affidavits and/or unconditional lien waivers (together with invoices, contracts, or other supporting data) from all contractors, subcontractors, and materialmen with contracts over \$5,000 covering all work, labor, and materials for the work through the date of the disbursement and establishing that all such work, labor, and materials have been paid for in full; (iii) waivers or disclaimers from suppliers of fixtures or equipment who may claim a security interest therein; and (iv) such other documentation or information requested by the City that a prudent construction lender might request.

(D) Retainage. After review and approval of a disbursement request, the City shall disburse 90% of the amount requested (with retainage of 10%). The retained amount shall be disbursed when (i) construction of the Public Infrastructure Improvements has been completed and a G704 has been delivered to the City; (ii) the City has obtained final lien waivers and all other conditions to payment set forth in this Agreement have been satisfied with respect to such payment; and (iii) Developer has complied with all of its other obligations, as it relates to the Project, under this Agreement as determined by the City in its sole discretion. For the avoidance of doubt, Developer may, following the completion of the Project, and upon the provision of the required documentation and the satisfaction of the other disbursement conditions in this Exhibit, request disbursement of the entire amount of Funds in one lump sum, in which case such amount would not be subject to retainage.

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

End of Exhibit

Exhibit G  
to Property Sale, Funding, and Development Agreement

*Form of Payment and Completion Guaranty*

SEE ATTACHED

## PAYMENT AND COMPLETION GUARANTY

This Payment and Completion Guaranty (“**Guaranty**”) is made as of the Effective Date (as defined on the signature page hereof) by **CINCINNATI CENTER CITY DEVELOPMENT CORPORATION**, an Ohio nonprofit corporation, the address of which is 1203 Walnut Street, 4th Floor, Cincinnati, Ohio 45202 (“**Guarantor**”) in favor of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”).

### Recitals:

A. The City and 101 West Fifth LLC, an Ohio limited liability company (“**Obligor**”), are parties to a *Property Sale, Funding, and Development Agreement* dated \_\_\_\_\_, 2024 (the “**Agreement**”). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Agreement.

B. Pursuant to the Agreement, among other things, Obligor is obligated to complete the Project, which includes the redevelopment of 62,000 square feet of renovated office space and approximately 13,000 square feet of renovated commercial space on certain real property more particularly detailed in the Agreement. Pursuant to the terms of the Agreement, Obligor has executed or will execute a promissory note in the principal amount of \$2,000,000 in favor of the City (the “**Note**”) in connection with the City’s partial financing of Obligor’s construction of the Project.

C. Guarantor, as a partner in the Project, will benefit from the provision of the Loan provided by the City in connection with the Project.

D. Pursuant to Section 3 of the Agreement, and as a material inducement to the City to enter into the Agreement, Guarantor is required to execute and deliver this Guaranty to the City.

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 (i) full and timely payment of the Obligor’s obligations to indemnify the City under the Agreement, (ii) the full and timely repayment of the Loan if and when the same becomes due and payable by Obligor under the Note, (iii) the full and timely payment of the Annual Payment and the Sale Payment if and when the same become due and payable by Obligor under the Agreement, and (iv) the full and prompt performance by Obligor or Obligor’s obligations under the Agreement to complete the Project in accordance with, and subject to, the terms and conditions of the Agreement and the Note, including payment to the City of any and all losses, damages, and expenses (including, without limitation, attorneys’ fees) suffered or incurred by the City and arising out of the failure by Obligor under the Agreement to do so, regardless of whether such losses, damages, or expenses are expressly provided for under the Agreement, or are then otherwise allowable by law (collectively, the “**Guaranteed Obligations**”).

(B) If Obligor fails to fulfill one or more of the Guaranteed Obligations, resulting in a notice of default from the City to Obligor under the Agreement, the City shall notify Guarantor thereof in writing. If the City provides notice of default, then Guarantor, within 10 business 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). All rights and remedies of the City under this Guaranty are cumulative, and nothing in this Guaranty shall be construed as limiting the City’s rights and remedies available under the Agreement or at law or in equity.

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

2. Liability of Guarantor.

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

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

(C) Guarantor's liability under this Guaranty shall continue after any assignment or transfer by the City or Obligor of any of their respective rights or interests under the Agreement or Note 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 Obligor, which shall continue to be governed by the terms of the Agreement). Guarantor's liability under this Guaranty shall not be affected by any bankruptcy, reorganization or insolvency of Obligor or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Obligor.

3. 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 or Note, except as stated herein; (v) any and all other notices and demands that may otherwise be required by law to be given or made; and (vi) any and all rights that Guarantor may have to a trial by jury in any action brought on or with respect to this Guaranty, all rights and remedies accorded by applicable law to Guarantor, including, without limitation, any extension of time conferred by any law now or hereafter in effect, and all rights of redemption, homestead, dower and other rights or exemptions of every kind, whether common law or statutory. In addition, Guarantor hereby expressly agrees that, if this Guaranty is enforced by suit or otherwise, or if the City exercises any of its rights or remedies under the provisions of the Agreement or the Note upon any default by Obligor in performing any of Obligor's obligations thereunder, Guarantor shall reimburse the City, upon demand, for any and all expenses, including without limitation attorneys' fees, that the City incurs in connection therewith, payable within 10 business days after the City's written demand.

4. Subrogation. Anything contained in any provision of this Guaranty, the Agreement, the Note, or applicable law to the contrary notwithstanding, any and all rights of Guarantor to collect amounts

that may be owed to it by Obligor shall be subordinate to amounts owed by Obligor to the City under the Note, and after an event of default under the Note and continuing until such time as all obligations of Obligor under the Note have been paid in full, Guarantor shall not accept any payments from Obligor. No payment by Guarantor under this Guaranty shall give Guarantor any right of subrogation to any rights or remedies of the City against Obligor under the Agreement. Until Obligor has paid and performed all of its obligations under the Agreement and the Note, Guarantor hereby waives all rights of contribution, indemnity or subrogation with respect to Obligor that might otherwise arise from Guarantor's performance under this Guaranty.

5. 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 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 to perform its obligations under this Guaranty; and (B) this Guaranty constitutes Guarantor's binding and enforceable legal obligation.

6. 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.

7. General Provisions.

(A) Amendment. This Guaranty may be amended or supplemented by, and only by, a written amendment 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 agrees that the City shall have the right to join Obligor in any action or proceeding commenced by the City under this Guaranty.

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

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

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

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

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

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

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

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

*Signature Page Follows*

Executed by the Guarantor, effective as of the date indicated below (the “**Effective Date**”).

GUARANTOR:

**CINCINNATI CENTER CITY DEVELOPMENT CORPORATION,**  
an Ohio nonprofit corporation

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

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

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

Date: \_\_\_\_\_, 2024

*[City Signature Page Follows]*

ACKNOWLEDGED AND ACCEPTED BY:

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Sheryl M. M. Long, City Manager

Date: \_\_\_\_\_, 2024

Approved as to Form:

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

cc: Karen L. Alder, City Finance Director



Exhibit H  
to Property Sale, Funding, and Development Agreement

*Additional Requirements*

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

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

(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.

(B) 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.

(C) Use of Nonfranchised Commercial Waste Haulers Prohibited. The City requires that persons providing commercial waste collection services (as that term is defined under CMC Chapter 730) within the City of Cincinnati obtain a franchise, and the City maintains a list of franchised commercial waste haulers. Developer is prohibited from using or hiring (or causing to be used or hired) a nonfranchised commercial waste hauler to provide commercial waste collection services in connection with the performance of this Agreement, and Developer is responsible for ensuring that any commercial waste collection services provided in connection with the performance of this Agreement are provided by a franchised commercial waste hauler. Questions related to the use of commercial waste franchisees can be directed to, and a list of current franchisees can be obtained from, the City's Office of Environment & Sustainability by calling (513)352-3200.

*ADDENDUM I*  
to  
*Additional Requirements Exhibit*

City's Prevailing Wage Determination

**REQUEST FOR PROJECT WAGE DETERMINATION**

2024-037

**DATE RECEIVED:**

1/25/2024

**DEI USE ONLY**

Fillout and Circle all that Apply Below:

**FUNDING GUIDELINES:**

(State or Federal)

**RATES THAT APPLY:**

(Building, Heavy, Highway, Residential)

State Prevailing Wage Rates Apply

DECISION NUMBER: N/A

MODIFICATION NUMBER: N/A

PUBLICATION DATE: N/A

**DETERMINATION BY:**

Name: Jonah James

Title: Development Manager

Date: 1/30/2024

**APPROVED BY:**

*Larua Castillo*

DIRECTOR, DEPARTMENT OF ECONOMIC  
INCLUSION

**COMMENTS:**

**ORIGINAL ASSIGNED NUMBER:**

**REQUESTING AGENCY OR DEPT:**

DCED

**CONTACT PERSON AND PHONE**

**NUMBER:**

Marc Von Allmen x6109

Requested Date: 01/24/2024

Estimated Advertising Date: 03/01/2024

Estimated Bid Opening Date: 03/15/2024

Estimated Starting Date: 04/01/2024

**SOURCE AND FUND NUMBER**

**CITY**        X        **FUND** 980

**STATE**               **FUND**

**COUNTY**               **FUND**

**FEDERAL**               **FUND**

**PROJECT BEING COMPETIVLY BID? X**

**PROJECT ACCOUNT NUMBER:**

**AMT. OF PUB. FUNDING \$:** 2,000,000

**TOTAL PROJECT DOLLARS:** 34,625,882

**NAME OF PROJECT**

101 W 5th St. Saks Building Redevelopment

The project as described is for building demolition and rehab, as well as streetscape work. The project is receiving a \$2,000,000 forgivable loan from the City, which is above the prevailing wage threshold for both building and heavy work according to ORC 4115.03, as updated by the Ohio Department of Commerce. Therefore, State of Ohio prevailing wage requirements will apply. State of Ohio building rates will apply to work done to the buildings while heavy highway rates will apply to the streetscape work.

NOTE: Any changes to the scope or funding of this project will require revision to this determination.



**TYPE OF WORK**

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

**PROJECT LOCATION**

Project is located at 101 W 5th Street in the Central Business District. Project involves the renovation of the vacant, 2.5 story Saks Fifth Avenue building into 60K SF of office space and 13K SF of commercial space. The project also includes demolition of the skywalk connecting the Saks building to the Carew Tower and limited restoration work for the Carew Tower.

**PROJECT FUNDING SOURCE**

Incentive package includes the following - Project TIF tax exemption. 30 years, net 67%. Estimated nominal value of \$6.1MM. - \$2MM forgivable loan from City with district TIF funds. - City is contributing real property at below FMV (\$4.2MM from County Auditor). - Project is also seeking \$1.5MM JobsOhio grant and \$3.5MM JobsOhio loan.

**PROJECT SCOPE OF WORK AND BUDGET**

Project Scope, including broken out public improvement funds scope, will be emailed separately.

**DEI 217 Form**  
**REV: 8/3/2023**