

EMERGENCY

City of Cincinnati

SSB

An Ordinance No. _____

- 2021

AWB

AUTHORIZING the City Manager to execute a *Development Agreement* with East End Development LLC pertaining to the redevelopment of property located south of Columbia Parkway along Walworth Avenue in the East End neighborhood of Cincinnati, pursuant to which the City will assign special assessment revenue and service payments in lieu of taxes received by the City to the Port of Greater Cincinnati Development Authority to facilitate the redevelopment project, which consists of environmental remediation and construction of various public improvements including public infrastructure, an extension of Walworth Avenue, and related improvements in support of a housing subdivision and related private improvements.

WHEREAS, the City and East End Development LLC (“Developer”) are parties to that certain *Property Sale and Development Agreement* dated April 1, 2020, pursuant to which the City conveyed certain real property south of Columbia Parkway at the then-existing terminus of Walworth Avenue for consolidation with Developer’s abutting property (collectively, the “Project Site”); and

WHEREAS, Developer and the City desire to enter into a *Development Agreement*, substantially in the form of Attachment A hereto (the “Development Agreement”), pertaining to Developer’s redevelopment of the Project Site into a housing subdivision consisting of (i) site preparation and related development to create buildable lots for the eventual construction of 39 single-family homes (the “Private Improvements”) at a total estimated cost of \$4,612,366.27 for the Private Improvements; and (ii) environmental remediation and construction of various public improvements including utility infrastructure and an extension of Walworth Avenue and related improvements in support of the Private Improvements (the “Public Infrastructure Improvements”; and jointly with the Private Improvements, the “Project”), at a total estimated cost of approximately \$13,965,354.19 for the Public Infrastructure Improvements; and

WHEREAS, on December 18, 2019, this Council passed Ordinance No. 540-2019 (the “TIF Ordinance”), pursuant to which the City declared that the Improvement (as defined in Ohio Revised Code (“ORC”) Section 5709.40(A)(4)) to the Project Site constitutes a public purpose and exempted 100% of the Improvement from real property taxation for a period of 30 years pursuant to ORC Section 5709.40(B) (the “TIF Exemption”); and

WHEREAS, the Project Site is located in the TIF District known as “District 26 - Eastern River Incentive District” (the “District”), established by Ordinance No. 512-2019, passed by this Council on December 18, 2019; and

WHEREAS, the City anticipates that it will keep the Project Site within the District and, by separate ordinance, layer the TIF Exemption over the exemption provided by the District, stating that the TIF Exemption will have priority over the District exemption; and

WHEREAS, pursuant to the TIF Ordinance, the current and future owners of the Project Site are required to make service payments in lieu of taxes in an amount equal to the amount of real property taxes that would have been paid on the Project Site had the TIF Exemption not been granted (the “Statutory Service Payments”); and

WHEREAS, 100% of the owners of a portion of the Project Site (the “Assessed Property”) executed and filed with Council a *Petition* for Special Assessments proposing the necessity of levying special assessments to pay a portion of the costs of the Public Infrastructure Improvements; and

WHEREAS, pursuant to Resolution No. 23-2021 passed by this Council on March 17, 2021, and Ordinance Nos. 101-2021 and 103-2021 passed by this Council on March 31, 2021 (collectively, the “Assessment Legislation”), the City has levied special assessments pursuant to ORC Chapter 727 against the Assessed Property (the “Assessment”); and

WHEREAS, the City anticipates that the Assessment revenue and the Statutory Service Payments will be used (as applicable): (i) to pay certain administrative fees to the Hamilton County, Ohio Auditor and the City; (ii) to make payments to the Board of Education of the Cincinnati School District under the City’s Agreement with the School Board dated July 2, 1999, as amended; (iii) to facilitate a bond issuance by the Port of Greater Cincinnati Development Authority to finance a portion of the Public Infrastructure Improvements (the “Bonds”); and (iv) to be retained by the City and used for any lawful purpose, in each case in the manner set forth in the Development Agreement; and

WHEREAS, the City and the Bank of New York Mellon Trust Company, N.A., as trustee, have entered into that certain *Trust Agreement* dated as of May 1, 1996 (as amended and supplemented the “City Trust Agreement”), pursuant to which the City has pledged the Special Funds (as defined in the City Trust Agreement) to repay various obligations of the City; and

WHEREAS, the City anticipates that it will pledge a portion of the Special Funds to further secure the obligation to pay amounts due with respect to the Bonds, to be evidenced by bonds issued by the City pursuant to a separate ordinance, and in the manner set forth in the Development Agreement; and

WHEREAS, the City will receive substantial economic and non-economic benefits from the Project in that the Project will create additional housing, stimulate economic growth in the East End neighborhood of Cincinnati and in surrounding areas, and enable the Project Site to be put to its highest and best use, for the benefit of the people of the City; and

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

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

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

Section 1. That the City Manager is hereby authorized to execute a *Development Agreement* with East End Development LLC (“Developer”), in substantially the form attached as Attachment A to this ordinance (the “Development Agreement”), pertaining to a redevelopment project located south of Columbia Parkway along Walworth Avenue, as more particularly described in the Development Agreement (the “Project” and the “Project Site”, as applicable).

Section 2. That the proper City officials are hereby authorized to take all necessary and proper actions to fulfill the terms of this ordinance, the Development Agreement, any and all Project-related documents described in or contemplated by the Development Agreement (including, without limitation, a cooperative agreement, as more particularly described therein), and all ancillary agreements, amendments, and other documents related to the Project and/or the Project Site, all as deemed necessary or appropriate by the City Manager.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to enable the parties to execute the Development Agreement as soon as possible so that the parties can promptly move forward with financing the Project, thereby creating additional housing and other significant economic benefits to the City at the earliest possible time.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No: _____

DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI,
an Ohio municipal corporation

and

EAST END DEVELOPMENT LLC,
an Ohio limited liability company

Project Name: Walworth Junction

(development of residential subdivision, including 39 buildable lots
and associated public infrastructure improvements)

Dated: _____, 2021

DEVELOPMENT AGREEMENT (Walworth Junction)

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into effective as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **EAST END DEVELOPMENT LLC**, an Ohio limited liability company, 4010 North Bend Road, Suite 301, Cincinnati, Ohio 45211 ("**Developer**").

Recitals:

A. The City and Developer are parties to that certain *Property Sale and Development Agreement* dated April 1, 2020 (the "**Sale Agreement**"), pursuant to which the City conveyed 1.6724 acres of real property south of Columbia Parkway at the terminus of Walworth Avenue in the East End neighborhood of Cincinnati for consolidation with Developer's abutting property, as depicted on Exhibit A (Site Plan) hereto (collectively, the "**Property**" or the "**Project Site**", as applicable).

B. Developer desires to redevelop the Project Site into a housing subdivision consisting of Developer's (i) site preparation and development to create buildable lots for the eventual construction of 39 single-family homes, as more particularly described on Exhibit B-1 (Description of Private Improvements) hereto (the "**Private Improvements**"); and (ii) environmental remediation and construction of various public improvements including utility infrastructure and an extension of Walworth Avenue and related improvements in support of the Private Improvements, as more particularly described on Exhibit B-2 (Description of Public Infrastructure Improvements) hereto (the "**Public Infrastructure Improvements**"; and jointly with the Private Improvements, the "**Project**").

C. The total estimated cost (including, without limitation, hard construction costs, soft costs, and acquisition costs) of (i) the Private Improvements is approximately \$4,612,366.27, as more particularly described on Exhibit C-1 (Sources and Uses – Private Improvements), and (ii) the Public Infrastructure Improvements is approximately \$13,965,354.19, as more particularly described on Exhibit C-2 (Sources and Uses – Public Infrastructure Improvements) hereto. Developer has represented to the City that it intends to use various sources of funds to finance the costs associated with the Project, as set forth on Exhibits C-1 and C-2 hereto.

D. Pursuant to Ordinance No. 540-2019, passed by City Council on December 18, 2019, the City created a so-called project-based TIF for the Project Site under Ohio Revised Code ("**ORC**") Section 5709.40(B), declaring Improvement (as defined in ORC Section 5709.40) to the Project Site to be a public purpose and exempt from real property taxation for a period of 30 years (the "**TIF Ordinance**" and the "**TIF Exemption**", as applicable).

E. Pursuant to the TIF Ordinance, the current and future owners of the Project Site are required to make service payments in lieu of taxes in an amount equal to the amount of real property taxes that would have been paid on the Project Site had the TIF Exemption not been granted (the "**Statutory Service Payments**").

F. One hundred percent (100%) of the owners of a portion of the Project Site (the "**Assessed Property**") have executed and filed with City Council a *Petition* for Special Assessments proposing the necessity of levying special assessments to pay a portion of the costs of the Public Infrastructure Improvements.

G. Pursuant to Resolution No. 23-2021 passed by City Council on March 17, 2021, and Ordinance Nos. 101-2021 and 103-2021 passed by City Council on March 31, 2021 (collectively, the "**Assessment Legislation**"), the City has levied special assessments pursuant to ORC Chapter 727 (the "**Assessment**") against the Assessed Property. The amount of the Assessment is currently anticipated to be \$330,000 annually (the "**Assessment Revenue**").

H. The City and the Bank of New York Mellon Trust Company, N.A., as trustee, have entered into that certain *Trust Agreement* dated as of May 1, 1996 (as amended and supplemented, the "**City Trust Agreement**"), pursuant to which the City has pledged the Special Funds (as defined in the City Trust Agreement) to repay various obligations of the City.

I. The parties currently anticipate that the Public Infrastructure Improvements will be financed by the Port of Greater Cincinnati Development Authority (the "**Port Authority**"). Developer presently intends to finance the construction

of the Public Infrastructure Improvements by entering into a separate construction agreement, cooperative agreement(s), and other ancillary agreements with the City and/or the Port Authority pursuant to which:

- (i) the Port Authority will issue multiple series of special obligation development revenue bonds (collectively, the "**Bonds**"), as more particularly described in the Port Authority Documents (as defined below), but generally in accordance with the following terms:
 - (a) Series A-1: in a principal amount not to exceed \$2,975,000, having a term not to exceed 15 years (the "**Series A-1 Bonds**"),
 - (b) Series A-2: in a principal amount not to exceed \$895,000, having a term not to exceed 15 years (the "**Series A-2 Bonds**"; and jointly with the Series A-1 Bonds, the "**Series A Bonds**"),
 - (c) Series B-1: in a principal amount not to exceed \$6,375,000, having a term not to exceed 30 years (the "**Series B-1 Bonds**"), and
 - (d) Series B-2: in a principal amount not to exceed \$2,465,000, having a term not to exceed 30 years (the "**Series B-2 Bonds**"; and jointly with the Series B-1 Bonds, the "**Series B Bonds**");
- (ii) the Port Authority will make the net proceeds from the Bonds available to Developer to pay, or reimburse for, the costs of constructing the Public Infrastructure Improvements, as will be determined by such separate agreements as may be entered into by the Port Authority, the City, and Developer;
- (iii) the City will receive from the Hamilton County Treasurer the Assessment Revenue and use the same, (a) first, to pay any fees charged by the Hamilton County Auditor or any other governmental entity, (b) second, to make payments to the Port Authority in amounts not to exceed the amount necessary to pay principal, interest, and other amounts due with respect to the Series A-1 Bonds, and (c) third, to make payments to the Port Authority in the amount necessary to pay principal, interest, and other amounts due with respect to the Series A-2 Bonds;
- (iv) the City will receive from the Hamilton County Treasurer the Statutory Service Payments generated from the Private Improvements pursuant to the TIF Ordinance ("**Project TIF Revenue**"), and use the same, (a) first, to pay any fees charged by the Hamilton County Auditor or any other governmental entity, (b) second, to satisfy the City's obligation to the Board of Education of the City School District of the City of Cincinnati (the "**School Board**") under that certain Agreement by and between the City and the School Board dated July 2, 1999, as amended, (c) third, to pay the City's fees described in Section 11 of this Agreement, (d) fourth, to make payments to the Port Authority in an amount not to exceed the amount necessary to pay principal, interest, and other amounts due with respect to the Series A-1 Bonds (after application of the Assessment Revenue as described in paragraph (iii) above), and (e) fifth, to make payments to the Port Authority in an amount not to exceed the amount necessary to pay principal, interest, and other amounts due with respect to the Series B Bonds, with any and all surplus Project TIF Revenue in any given year to be retained by the City or returned to the City, as applicable, and used for any lawful purpose;
- (v) Thomas J. Ackermann and Ralph Meierjohan have agreed to guaranty repayment of the Series A-1 Bonds by execution of a Guaranty Agreement (the repayment guaranty evidenced by the Guaranty Agreements being referred to herein as the "**Guaranty**"); and
- (vi) the City will pledge a portion of the City's Special Funds (as defined in the City Trust Agreement) to the Port Authority as the issuer of the Series A-1 Bonds, to further secure the obligation to pay principal and interest due with respect to the Series A-1 Bonds, to be evidenced by bonds issued by the City (the "**City Bonds**"); *provided that* principal and interest on the City Bonds shall be payable only to the extent the Assessment Revenue, the Project TIF Revenue, and amounts required to be

paid pursuant to the Guaranty are insufficient or unavailable to pay principal and interest due and payable on the Series A-1 Bonds.

J. The cooperative agreement(s) referred to herein, together with such other documents with respect to the Project and the Bonds entered into with the Port Authority and Developer to which the City is a party, are referred to herein as the **"Port Authority Documents"**; and the Port Authority Documents, this Agreement, the Sale Agreement, and such other ancillary documents and instruments executed by Developer and the City, or executed by Developer in favor of the City, are referred to herein as the **"Project Documents"**.

K. All or a portion of the Project Site is located in the TIF District known as "District 26 - Eastern River Incentive District" (the **"District"**), established by Ordinance No. 512-2019, passed by City Council on December 18, 2019. The City anticipates that it will keep the Project Site within the District and "layer" the TIF Exemption over the existing exemption provided by the District, stating that the TIF Exemption will have priority over the District exemption.

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

M. The City, upon recommendation of the City's Department of Community and Economic Development (**"DCED"**), believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements and for this reason the City desires to facilitate the Project by entering into this Agreement, levying special assessments against the Assessed Property to generate the Assessment Revenue, and providing the TIF Exemption and requiring the Statutory Service Payments as described herein and in the cooperative agreement.

N. Execution of this Agreement was authorized by the TIF Ordinance, the Assessment Legislation, and Ordinance No. []-2021, passed by City Council on [], 2021. Notwithstanding anything to the contrary in this Agreement, the City's obligations hereunder are conditioned upon the passage of any and all other required legislation by City Council.

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

1. **DUE DILIGENCE INVESTIGATIONS.**

(A) **Due Diligence Items.** Following the parties' execution of this Agreement and at such time as such documents become available, Developer, at its sole expense, shall obtain and deliver to the City the following items (the **"Due Diligence Items"**):

- (i) *Survey:* One or more ALTA boundary survey(s) of the Project Site showing all easements and other matters of record that can be shown on a survey;
- (ii) *Appraisal:* A projected "as-built" appraisal of the Private Improvements (but only if such an appraisal is required by the Port Authority);
- (iii) *Site Plan:* A detailed site plan showing the proposed location of the Private Improvements and the Public Infrastructure Improvements, as applicable;
- (iv) *Environmental:* A copy of whatever environmental reports Developer may obtain or has obtained in connection with the Project, including, at a minimum, a Phase I environmental site assessment under current ASTM standards;
- (v) *Engineering Studies.* Geotechnical or other engineering studies for the parcels upon which the Public Infrastructure Improvements will be constructed;
- (vi) *Construction Schedules:* A detailed construction timeline showing anticipated commencement and completion dates for the Project, including significant milestones;
- (vii) *Budget:* A detailed and updated budget for the Project;
- (viii) *Financing:* Evidence satisfactory to the City that Developer has obtained all financing necessary to complete the Project;

- (ix) *New Legal Descriptions and Surveys*: Updated legal descriptions and ALTA property surveys for the Project Site, if applicable;
- (x) *Service Payment Projections*: A detailed analysis showing the projected Statutory Service Payments that will be generated from the Project;
- (xi) *Port Authority Documents*: Such other information and documentation as may be required by the Port Authority; and
- (xii) *Other Information*: Such other information and documents pertaining to Developer or the Project as the City may reasonably require.

(B) Copies of Due Diligence Items to Be Provided to City. Without limitation of Developer's other obligations under this Agreement, prior to the issuance of the Bonds, and as such Due Diligence Items are obtained by Developer, Developer, at no cost to the City, shall provide DCED with copies of the inspection, engineering, and environmental reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer.

(C) Contingency for City's Satisfaction with Due Diligence Investigations. All reports and the like obtained by Developer from third parties and delivered to the City shall be recent (*i.e.*, prepared or updated, as the case may be, within three (3) months from the date that the item is delivered to the City) and shall be prepared by properly licensed and qualified companies or individuals acceptable to the City. In addition to the Due Diligence Items, Developer and the City may conduct whatever additional investigations concerning the Project as they deem necessary, including, without limitation, investigations into the feasibility and likelihood of Developer obtaining all building, zoning, and other approvals from the City's Department of Buildings and Inspections ("**B&I**"), the Department of City Planning ("**Planning**"), the City Planning Commission, and any other applicable City departments, agencies or boards. If, prior to the issuance of the Bonds, any party hereto determines that the Project is not feasible or desirable for any reason, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other party written notice thereof, whereupon this Agreement shall terminate and the parties hereto shall thereafter have no rights or obligations hereunder. Unless otherwise directed by the DCED Director, Developer shall deliver all the Due Diligence Items to be provided by Developer to the City under this Agreement to the DCED Director (for review by DCED and other City departments as deemed necessary or appropriate by DCED) and shall generally coordinate all aspects of the Project (as they relate to the City) through DCED. The termination rights of the parties under this paragraph shall automatically terminate upon the issuance of the Bonds.

2. PLANS AND CONSTRUCTION.

(A) Preparation of Plans and Specifications. Developer shall prepare plans and specifications for the Project and shall submit the same to DCED for review and approval; *provided that* DCED may only withhold approval if such plans and specifications (i) reduce or diminish the size, scope, quality, or site plan of the Project, (ii) could reasonably be expected to reduce the hard construction costs of the Project, or (iii) are otherwise inconsistent with zoning laws or any planned development approved by the City Planning Commission and City Council with respect to the Project or are materially inconsistent with Exhibits B-1 and B-2 hereto, in each case as determined in the DCED Director's sole and absolute discretion. The approved plans and specifications for the Project (including any and all changes thereto, subject to the City's review and approval on the criteria provided in the immediately preceding sentence) are referred to herein as the "**Final Plans**" with respect to the Project. Developer shall submit any and all proposed changes to the Final Plans to DCED and all governmental departments, agencies, and entities with jurisdiction for review and approval.

(B) Commencement and Completion of Construction. Developer shall complete the Project, and all components thereof, in accordance with Exhibits B-1 and B-2, and substantially as reflected in the Final Plans, and in compliance with all applicable laws by December 31, 2024.

(C) Dedicated ROW. The parties acknowledge that, upon completion, Developer intends to dedicate the public right-of-way portion of the Public Infrastructure Improvements, as depicted on Exhibit A-1 (the "**Dedicated ROW**"), for public use, and intends for the City to accept the Dedicated ROW (subject to all approvals as required by the City's Department of Transportation & Engineering ("**DOT**"), the City's Office of Environment and Sustainability, and City Planning Commission, and subject to the passage by Cincinnati City Council of an ordinance to accept the dedication). Developer shall prepare all survey plats, legal descriptions, and other documents as may be required by the City and the Hamilton County Auditor and Recorder in connection with such dedication and acceptance, all at no cost to the City. Developer acknowledges that, (i) if Developer does not construct the Dedicated ROW in accordance with DOTE, Greater Cincinnati Water Works, or Metropolitan Sewer District of Greater Cincinnati requirements, the City will not accept the

dedication of the Dedicated ROW, and (ii) the City makes no guarantee that Cincinnati City Council will pass an ordinance to accept the dedication.

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

(E) Applicable Laws. Developer shall obtain, pay for, and maintain all necessary building permits and other permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements applicable to the construction of the Project. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits, or other approvals from Planning, B&I, DOTE, other City departments, City Planning Commission, or City Council that may be required in connection with the Project.

(F) Inspection of Work. During construction, the City, its employees, and agents shall have the right at all reasonable times to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement. Notwithstanding anything to the contrary in this paragraph (F) or this Agreement, nothing herein shall in any way limit the inspection rights the City otherwise legally possesses, whether in connection with its police powers, permitting, or otherwise.

(G) Mechanics' Liens. Developer shall not permit any mechanics' or other liens to be filed against the portion of the Project Site comprising the Dedicated ROW during construction of the Public Infrastructure Improvements. If a mechanics' lien shall at any time be filed, Developer shall within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record.

(H) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Project Site that exists at or prior to the time of the City's execution of this Agreement (herein, a "pre-existing environmental condition"), and regardless of whether or not such pre-existing environmental condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City, Developer shall (i) at no expense to the City, promptly take all steps necessary to remediate such pre-existing environmental condition in accordance with applicable laws and regulations, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability, and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including, without limitation, reasonable attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the City as a result of or arising from any such pre-existing environmental condition. Additionally, Developer shall covenant not to sell, transfer, or convey that portion of the Sale Property (as defined in the Sale Agreement) north of the southern edge of the Walworth Avenue right-of-way by executing and promptly thereafter recording with the Hamilton County Recorder, a restrictive covenant, in substantially the form of Exhibit D (Form of Restrictive Covenant) hereto. Developer's remediation and indemnity obligations under this paragraph shall survive the completion of the Project.

3. CITY'S FINANCIAL ASSISTANCE.

(A) Funding for Public Infrastructure Improvements. For the avoidance of doubt, Developer acknowledges that the City's financial assistance is limited to the funds identified in this Agreement, which shall be used exclusively for costs associated with the construction of the Public Infrastructure Improvements. The City's commitment to provide the funding described herein shall be (i) subject to and contingent upon, without limitation, the execution and continued effectiveness of this Agreement and the Port Authority Documents, and (ii) limited to providing the funding described herein to the Port Authority for payment of the Bond obligations, all in accordance with the Port Authority Documents.

(i) Assessment Revenue. To facilitate the issuance of the Series A Bonds, and subject to (a) the continued effectiveness of the Assessment Legislation and the Assessment, and (b) the City's receipt of the Assessment Revenue, the City shall transfer the Assessment Revenue it actually receives to or for the benefit of the Port Authority in an amount not to exceed the amount necessary to satisfy the annual obligations associated with the Series A Bonds in accordance with the Port Authority Documents.

(ii) Project TIF Revenue. To facilitate the issuance of the Series A-1 Bonds and the Series B Bonds, and subject to the City's receipt of the Project TIF Revenue, the City shall transfer the Project TIF Revenue it actually receives to or for the benefit of the Port Authority in an amount not to exceed the amount necessary to satisfy the annual obligations associated with the Series A-1 Bonds and Series B Bonds in accordance with the Port Authority Documents and following payment of the obligations outlined in Recital I(iv) hereto. Developer acknowledges and agrees that the City will not provide the Project TIF Revenue to or for the benefit of the Port Authority for payment of the Bond obligations other than with respect to Statutory Service Payments for tax years falling within the period of the TIF Exemption that are actually paid and actually received by the City. To the extent the Project TIF Revenue in any year exceeds the amount payable to or for the benefit of the Port Authority for payment of the Bond obligations for such year, as more particularly described in the Port Authority Documents, the City shall be entitled to retain and use such excess Project TIF Revenue for any lawful purpose. For the avoidance of doubt, to the extent the Project TIF Revenue associated with any portion of the Project is not required to be used to pay or secure Bond obligations, for any reason, the City shall be entitled to retain and use such excess Project TIF Revenue for any lawful purpose.

(iii) City Bonds. To facilitate the issuance of the Series A-1 Bonds, the City shall pledge the Special Funds (as defined in the City Trust Agreement) towards the repayment of the City Bonds for the benefit of the holders of the Series A-1 Bonds, and shall permit the transfer to or for the benefit of the Port Authority, from Special Funds or other amounts available to the City, an amount necessary to satisfy the annual obligations associated with the Series A-1 Bonds to the extent required under the Port Authority Documents. For the avoidance of doubt, Developer acknowledges that the principal and interest on the City Bonds shall be payable from funds of the City as described in this Section 3(A)(iii) only to the extent the Assessment Revenue, Project TIF Revenue, and amounts required to be paid pursuant to the Guaranty are insufficient or unavailable to pay principal and interest due and payable on the Series A-1 Bonds.

(B) 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 tenants or other occupants of the Project Site, or for the benefit of any other third party unless the City agrees to the contrary in writing. Notwithstanding the foregoing, nothing in this Agreement is intended to limit the rights of homeowners from applying for and receiving (if eligible) residential property tax abatements available within the City of Cincinnati pursuant to the City's generally applicable community reinvestment area program.

4. INSURANCE; INDEMNITY.

(A) Insurance during Construction. Until such time as all construction work associated with the Project has been completed, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least \$5,000,000 per occurrence, combined single limit/\$10,000,000 aggregate, naming the City as an additional insured with respect to the Project; (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed as part of the Project; (iii) worker's compensation insurance in such amount as required by law; (iv) all insurance as may be required by Developer's construction lenders or by the Port Authority; and (v) such other insurance as may be reasonably required by the City. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Prior to commencement of construction of the Project, Developer shall send proof of all such insurance to the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time; *provided that* if the City requests an additional insured endorsement with respect to the Commercial General Liability insurance described above, Developer shall have 6 months following the date of the City's request to obtain such an endorsement from its insurer and provide the original endorsement to the City.

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

Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

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

5. CASUALTY; EMINENT DOMAIN. If the Project is damaged or destroyed by fire or other casualty during construction, or if any portion of the Project Site is taken by exercise of eminent domain (federal, state, or local) during construction, Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Project Site was in immediately prior to such occurrence. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications if they deviate from the original City-approved plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Project Site is being repaired or restored.

6. DEFAULT; REMEDIES

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

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

(a) the dissolution of Developer, the filing of any bankruptcy or insolvency proceedings by Developer, or the making by any such entity 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 sixty (60) days following the date thereof.

(ii) The occurrence of a Specified Default (as defined below), or a failure of Developer to perform or observe (or cause to be performed or observed) any obligation, duty, or responsibility under this Agreement or any other Project Document, and failure by Developer to correct such default within thirty (30) days after the receipt by Developer of written notice thereof from the City (the "**Cure Period**"), other than a Payment Default (as described below), in which case there shall be a Cure Period of 5 business days after Developer's receipt of written notice thereof from the City; *provided, however*, that if the nature of the default is such that it cannot reasonably be cured during the Cure Period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within such Cure Period and thereafter diligently completes such cure within sixty (60) days after receipt of the City's initial notice of default. 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, or (y) complete the Project in accordance with Exhibits B-1 and B-2 and substantially in accordance with the Final Plans for the Project; or (2) abandons the Project.
- (b) Misrepresentation. Any representation, warranty, or certification of Developer made in connection with this Agreement or any other Project Document shall prove to have been false or materially misleading when made.

(B) Remedies. Upon the occurrence of an event of default under this Agreement which is not cured or corrected within any applicable Cure Period, the City shall be entitled to (i) terminate this Agreement 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 as a result of a default or event of default of Developer under this Agreement or the City's termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty, or to pursue any remedy, under this Agreement or any other Project Document shall not constitute a waiver of the breach of such covenant or of such remedy.

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

To the City:
City Manager
City of Cincinnati
801 Plum Street
Cincinnati, Ohio 45202

To Developer:
East End Development LLC
4010 North Bend Road, Suite 301
Cincinnati, Ohio 45211

with a copy to:
Director, Dept. of Community and
Economic Development
City of Cincinnati
805 Central Avenue, Suite 700
Cincinnati, Ohio 45202

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

8. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF DEVELOPER. Developer hereby makes the following representations, warranties, and covenants to induce the City to enter into this Agreement:

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

(ii) Developer has full power and authority to execute and deliver this Agreement and every other Project Document to which it is or will be a party and to carry out the transactions provided for herein and therein. This Agreement and each other Project Document to which Developer is a party has by proper action been duly authorized, executed, and delivered by Developer and all actions necessary have been taken to constitute this Agreement

and the other Project Documents to which Developer is a party, when executed and delivered, valid and binding obligations of Developer.

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

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

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

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

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

9. REPORTING REQUIREMENTS.

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

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

10. GENERAL PROVISIONS.

(A) Assignment; Change of Control.

(i) Assignment. Developer shall not assign its rights or interests under this Agreement to any third party without the prior written consent of the City Manager; and *provided*, that the City may require the execution of an amendment hereto or other clerical documentation to effect such assignment or substitution of parties. The City hereby

consents to Developer's collateral assignment of its rights under this Agreement or the Project Documents to the Port Authority.

(ii) Change of Control. Developer shall not permit a Change of Control (as defined below) without the prior written consent of the City. As used herein, "**Change of Control**" means a change in the ownership of Developer such that Thomas J. Ackermann or Ralph Meierjohan has less than a 51% 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; Conflicting Provisions. This Agreement, together with the other Project Documents, contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other Project Documents are in conflict with the specific provisions of such other Project Documents, the provisions of such other Project Documents shall control.

(C) Amendments and Waivers. The provisions of 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 Recording. This Agreement shall not be recorded in the Hamilton County Recorder's office.

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

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

(K) No Brokers. Developer hereby 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 as a result of the parties' execution of this Agreement.

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

(M) Recognition of City Support. In connection with the construction and opening of the Project, the parties shall acknowledge the support of the City with respect to the Project in all printed promotional materials (including, without limitation, informational releases, pamphlets and brochures, construction signs, project and identification signage, and stationary) and any publicity (such as but not limited to materials appearing on the Internet, television, cable

television, radio, or in the press or any other printed media) relating to the Project. In identifying the City as a Project partner, the parties shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logo type or other form of acknowledgement that has been approved in advance in writing by the City.

(N) Applicable Laws. Developer shall obtain and maintain all necessary City and other governmental permits, licenses, and other approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances, and other governmental requirements, including, without limitation, those set forth on Exhibit E (Additional Requirements) that are applicable to the Project.

(O) Counterparts and Electronic Signatures. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same Agreement. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

11. FEES AND EXPENSES.

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

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

(C) City's Outside Counsel Fees Associated with Bonds. Developer shall pay any and all outside counsel fees incurred by the City related to the negotiations and issuance of the Bonds out of the proceeds of the Bonds, or in some other manner mutually acceptable to Developer and the City.

12. EXEMPTION APPLICATION. Developer, or its representatives (as applicable), shall prepare, in a timely fashion, and the City shall execute, and (following the City's prior receipt of copies for review and approval in the City's sole and absolute discretion) file such applications, documents, and other information with the appropriate officials of the State of Ohio and Hamilton County, or other public body as may be required to effect and maintain during the period of the TIF Exemption as described in ORC Chapter 5709 the exemption from real property taxation as contemplated by said Chapter. Developer and the City currently expect that such exemption from real property taxation shall apply initially to the 2021 tax year.

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

<u>Exhibit A</u>	- <i>Site Plan</i>
<u>Exhibit B-1</u>	- <i>Description of Private Improvements</i>
<u>Exhibit B-2</u>	- <i>Description of Public Infrastructure Improvements</i>
<u>Exhibit C-1</u>	- <i>Sources and Uses – Private Improvements</i>
<u>Exhibit C-2</u>	- <i>Sources and Uses – Public Infrastructure Improvements</i>
<u>Exhibit D</u>	- <i>Form of Restrictive Covenant</i>
<u>Exhibit E</u>	- <i>Additional Requirements</i>

(incl. Addendum I - City's Prevailing Wage Determination)

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF CINCINNATI

By: _____
Paula Bogs Muething, City Manager

Date: _____, 2021

EAST END DEVELOPMENT LLC

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A
to Development Agreement
(Walworth Junction)

Site Plan

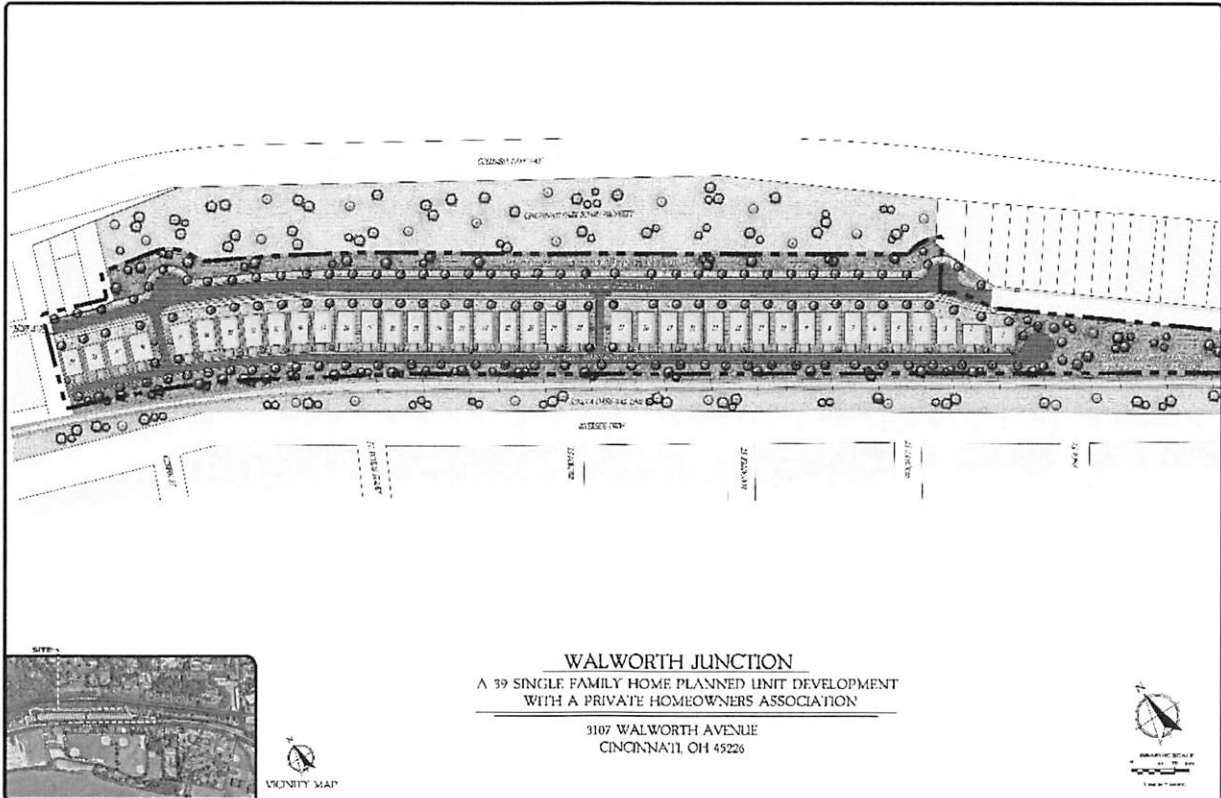


Exhibit B-1
to Development Agreement
(Walworth Junction)

Description of Private Improvements

The Walworth Junction development, location of the 2020 HOMERAMA, is a housing subdivision consisting of the construction of 39 single-family homes located east of the existing terminus of Walworth Avenue, Cincinnati, Ohio 45226.

INFRASTRUCTURE

The development consists of both public and private infrastructure improvements. The private infrastructure improvements include the following:

- 1) Rough grading of all areas outside of public right of way and establishment of compacted soil suitable for construction of standard single-family home basement structures
- 2) Finish grading of all areas outside of public right of way and establishment of appropriate temporary and permanent vegetation to protect against erosion
- 3) Construction of permanent detention basin for stormwater management on private property
- 4) Storm sewer piping and related inlet structures outside of public right of way for management of water from new homes and on private roadways
- 5) Construction of private roadway and access drives to service rear garage areas of all 39 lots. Roadway is built within private easement areas on lots and land owned by the Homeowner's Association (the "HOA").
- 6) Water line connection and private supply services to all lots
- 7) Landscaping in private areas outside of public right of way

Description and quantity list of the private infrastructure improvements:

UNIT

L.S. Lump Sum
AC ACRES
CY CUBICK YARDS
LF LINEAL FEET
SY SQUARE YARDS

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>
<u>MOBILIZATION</u>	1	Each
Clearing and Grubbing	4.5	ACRE
Construction Entrance	1	EACH
Clay Excavation to Subgrade	6.5	CY
Clay Embankment to Subgrade	13,000	CY
Topsoil Stripping and Stockpiling	4,250	CY
Topsoil Redistribution to Final Grade	4,250	CY
 <u>STORM SEWER</u>	 <u>QUANTITY</u>	 <u>UNIT</u>
8" Downspout Collector/Sump Line	1,376	LF
8" Downspout Collector Line Cleanout	6	EACH
6" Downspout Lateral	390	LF
8"X6" Downspout Tee	39	EACH
12" Storm Sewer AASTO M294	709	LF

15" Storm Sewer AASTO M294	41	LF
18" Storm Sewer AASTO M294	494	LF
18" Storm Sewer Conc. Class IV	120	LF
24" Storm Sewer Conc. Class IV	751	LF
Catch Basin 2-2	2	EACH
Catch Basin 2-2	9	EACH
HW 2.1	1	EACH
Tie Prop. STM MH INTO EX. 54" STM (Incl. MH)	1	EACH

PAVEMENT

	<u>QUANTITY</u>	<u>UNIT</u>
Concrete Pavement	3,850	SY

SEDIMENT AND EROSION CONTROL

	<u>QUANTITY</u>	<u>UNIT</u>
Inlet Filter	11	EACH
Inspection and Maintenance of Erosion Controls	1	LS
Temporary Sediment Basin	1	EACH
Restoration Seeding	0.5	ACRE

LOT DEVELOPMENT STANDARDS

The majority of lots in Walworth Junction will accommodate homes that are 30' in width and +50' in depth. The three lots at the entrance (lot #'s 1, 2, & 3) allow for wider but shallower homes. Home widths are limited by the lot size (40' with 1 5' minimum side yard requirement) and the depths are limited by the sanitary sewer utility easement that encumbers the rear of these lots.

All homes are required to have rear entry garages in the basements and two full finished floors of living space above grade with a partially enclosed third floor and an open air "roof deck". Floor heights are planned to be the following: basement=10'; first floor=11'; second floor=10'; third floor "bonus room"=9'.

All homes must be comprised of exterior finishes that are natural, or man-made hard surface materials. Stone, brick, cement board, or metal are all acceptable materials for this application.

The homes' enclosed finished floor space above grade is expected to range from a minimum of 3000 square feet to upwards of 6000 square feet.

The lot and home designs allow for at minimum two car parking spaces inside the building and two car parking spaces on the private driveways in the rear adjoining the private alley way.

All homes must conform with Developer's established architectural design standards established as part of the HOA. The HOA is responsible for monitoring and enforcing these standards.

All homes in the development are required to attain a minimum Leadership in Energy and Environmental Design (LEED) rating of GOLD. The development has applied for a "LEED Neighborhood Development" rating ("LEED ND") with United States Green Building Council (USGBC), and anticipate that Walworth Junction will be the first LEED ND with all Gold level certified homes in the United States.

All the homes are designed to have exposed lower levels on the rear alley side of each building and both the HOA and Developer have required that all garages be in the rear lower level of each home. This protects and enhances the value of the homes by preserving and presenting an attractive street façade of front porches connected by public sidewalks along the entire length of Walworth Avenue.

Exhibit B-2
to Development Agreement
(Walworth Junction)

Description of Public Infrastructure Improvements

Developer will construct various Public Infrastructure Improvements including sidewalks, street, irrigation, public signage, remediation of certain environmental conditions, and other related improvements to the Walworth Junction subdivision.

UNIT

L.S. Lump Sum
AC ACRES
CUBICK
CY YARDS
LF LINEAL FEET
SQUARE
SY YARDS

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>
<u>MOBILIZATION</u>	1	EACH
Clearing and Grubbing	2	ACRE
Construction Entrance	1	EACH
Clay Embankment to Subgrade	19,000	CY
Topsoil Stripping and Stockpiling	750	CY
Topsoil Redistribution to Final Grade	750	CY
Fine Grade Streets/Subgrade	5,732	SY
Fine Grade Green Spaces and R/W	1	SY
Build Detention Pond with Dirt	1	LS
Backfill behind Lagging Wall		LS
Stabilize Hillside		
Miscellaneous Other Grading		
Miscellaneous Site Work		

UTILITY CROSSOVERS

	<u>QUANTITY</u>	<u>UNIT</u>
4-4" PVC (Concrete Encased)	0	

SANITARY SEWER

	<u>QUANTITY</u>	<u>UNIT</u>
6" Sanitary Sewer (House Laterals)	390	LF
Clean Outs	39	EACH
8" Sanitary Sewer SDR-35	1,614	LF
Standard Manholes	6	EACH
Remodel Existing Manholes	2	EACH
8"x6" Tees	39	EACH
MSD Inspection	1	LS
Tie Wall Drains		

STORM SEWER

	QUANTITY	UNIT
12" Storm Sewer Class IV Concrete	232	LF
15" Storm Sewer Class IV Concrete	580	LF
18" Storm Sewer Class IV Concrete	455	LF
54" Storm Sewer Class IV Concrete	72	LF
Cleanout	1	EACH
Combination Inlet Manhole	1	EACH
Curb Inlet	7	EACH
Detention Structure	1	EACH
Headwall	1	EACH
Manhole	4	EACH
Raise MH Cover to Prop. Grade	2	EACH
Remodel Ex. MH to Curb Inlet	1	EACH
Rock Channel Protect	30	CY
Tie Prop. STM MH Into Ex. 24" STM (Inc. MH)	1	EACH
Tie Prop. STM MH Into Ex. 54" STM (Inc. MH)	2	EACH
Wall Underdrain	700	LF

WATERLINE

	QUANTITY	UNIT
8" Waterline (Including Bends)	1,870	LF
Field Loc Gaskets	1	SL
6" Fire Hydrant	4	EACH
6" Mega Lugs	1	LS
8" Valve and Chamber	2	EACH

SEDIMENT AND EROSION CONTROL

	QUANTITY	UNIT
Silt Fence	1,650	LF
Inlet Filter	8	EACH
Inspection and Maintenance of Erosion Controls	1	LS
Temporary Sediment Basin	1	EACH
Restoration Seeding	4.5	ACRE
8" Mega Lugs	1	LS
¾" Branches	39	EACH
GCWW Inspection	1	LS
Relocate Fire Hydrant	1	EACH
Tie Prop 8" Water Main Into EX. 8" Dip Water Main	2	EACH
Waterline Testing	1	LS

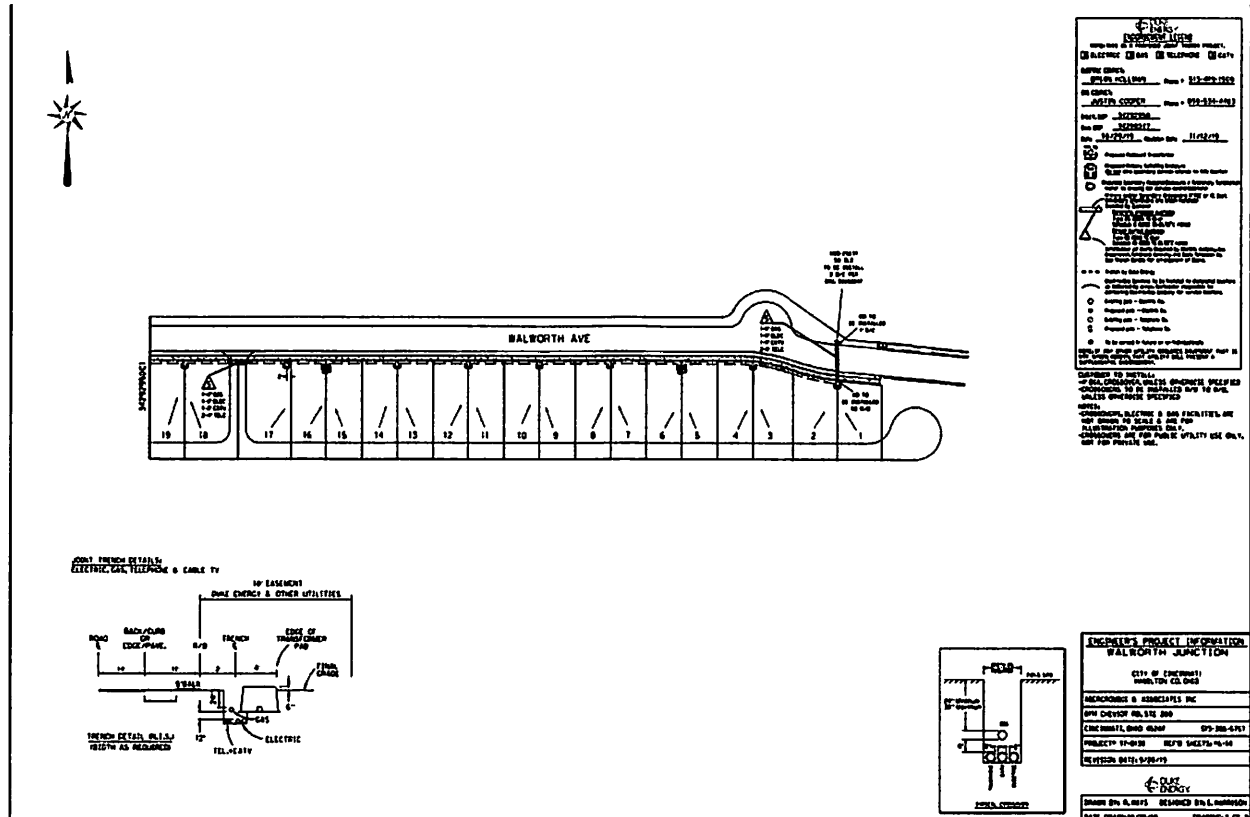
PAVEMENT

	QUANTITY	UNIT
6" Limestone	5,732	SY
6" 301 Asphalt Base (Curb Seal)	4,760	SY

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1.5" 448 Type 2 Intermediate	4,760	SY
1.5" 448 Type 1 Surface W/Tack	0	SY
Concrete Curb and Gutter	3,240	LF
Concrete Driveway Apron	2	EACH

GAS LINES

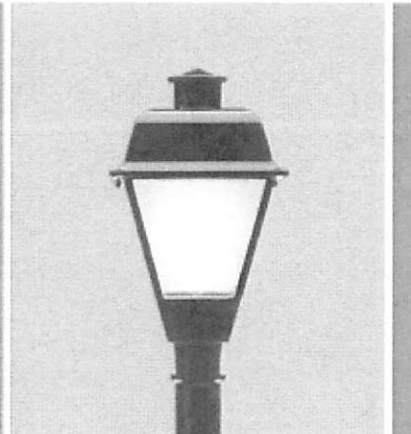


STREETLIGHTS

Quantity: 11
 Light Source: LED
 Wattage: 50 Watts
 Lumens: 4,500
 Light Pattern: IESNA Type III (Oval)
 IESNA Cutoff classification: Cutoff
 Color Temperature: 4,000K
 Warm-up and restrike time: Instant on (no warm-up or restrike time)
 POLE: Aluminum
 Mounting Height: 12', 17' (Style B pole only)
 Colors: Black/Green
 *Lighting LED BUG Rating B-1, U-3, G-2

Outdoor Lighting

Traditional LED



Subject to variation from manufacturer. Contact us for region-specific details.

Illuminate pathways and residential communities with the energy-efficient Traditional LED. This Colonial lantern-style fixture will add style and charm to any neighborhood or park.

LED <i>(Light Emitting Diode)</i>	50 watts
Mounting height	12', 17' (Style B pole only)
Colors	Black Green
Poles	Style A, B, C, D, E, F
Applications	Neighborhoods Parks

Outdoor Lighting

Traditional LED

Light source: LED (white)

Wattage: 50

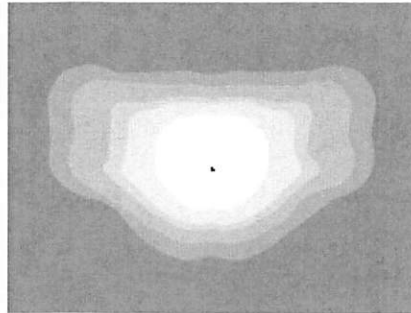
Lumens: 4,500

Light pattern: IESNA Type III (oval)

IESNA cutoff classification: Cutoff

Color temperature: 4,000K

Warm-up and restrike time: Instant on (no warm-up or restrike time)



Light distribution pattern

Pole available:

Name	Mounting height	Color
Aluminum	12', 17' (Style B pole only)	Black Green

Features

Little to no upfront capital cost required

Design services by lighting professionals included

Maintenance included

Electricity included

Warranty included

One low monthly cost on your electric bill

Turnkey operation

Backed by over 125 years of experience

Benefits

Frees up capital for other projects

Meets industry standards and lighting ordinances

Eliminates high and unexpected repair bills

Less expensive than metered service

Worry-free

Convenience and savings for you

Provides hassle-free installation and service

A name you can trust today ... and tomorrow

RETAINING WALL

Solider Pier I Beam walls with Allan Block Facing tied back with Geogrid

Completed geogrid Reinforced Hickory Allan Block Retaining Walls.

TO INCLUDE: Footer excavation, compacted limestone base, allan block, geogrid, compacted sand back fill, drain tile, cap and corner block.

- 2 Walls on the North Side of Street
Roughly 9000 Square feet
- 1 Wall on the East Entry to the Development
Roughly 700 Square Feet
- Wall 3 – 770 Square feet
- Wall 4 – 550 Square feet

ENVIRONMENTAL REMEDIATION

Developer hired Terracon Engineering firm and Environmental Management Specialists to complete the investigation, remediation, documentation, and complete coordination and submission to Ohio EPA to achieve compliance with an "Unrestricted Residential Use" designation for the site.

Environmental Testing: Environmental research including Phase I and Phase II testing throughout the 6 acre site at 3101 Walworth Avenue.

Site Preparation: Addition of temporary site access roads; removal of approx. 20,000 tons of clean concrete

Removal of Contaminated Soil: Removal of 80,000 Cubic Yards of material taking a minimum of 2' of material across the whole site with greater amounts removed from areas of environmental concern. These materials were excavated, tested, and removed to an offsite EPA regulated landfill.

Addition of Clean Fill to the Site: Following the removal of contaminated soil, clean soil was delivered from off-site, off loaded, and compacted to fill in all the areas that previously held contaminated soil.

All work was fully documented and recorded by certified engineers and professionals.

At the completion of the remediation process a "Certified Professional" submitted a detailed report to attest to the process and certify that all work was completed correctly, all lab tests verified compliance, and that the site meets the criteria of an "unrestricted residential use" as stipulated by the Ohio EPA.

The Ohio EPA reviewed our submission and granted us a Covenant Not to Sue for the site and all parties involved. This certification is attached to the deeds of the properties and remains in full force and effect with all subsequent property owners.

Exhibit C-1
to Development Agreement
(Walworth Junction)

Sources and Uses – Private Improvements

Sources of Funding

Developer Equity/Short Term Financing	\$ 4,612,366.27
Total Sources	\$ 4,612,366.27

Uses of Funding

<u>Hard Costs</u>	
Land Acquisition	\$ 875,273.62
Private Infrastructure	\$ 680,995.20
Overhead Management	\$ 226,847.22
Subtotal Hard Costs	\$ 1,783,116.04

<u>Soft Costs</u>	
Title Insurance & Legal	\$ 69,588.67
Heritage Bank Closing Fees	\$ 36,792.50
Guarantee Fee - Eliot Myers	\$ 17,500.00
Private Developer Counsel	\$ 101,967.45
Subdivision/Community Maintenance	\$ 47,798.13
Cluster Mailboxes	\$ 3,585.00
Public Relations & Community Outreach	\$ 61,585.14
Marketing	\$ 21,996.41
Interest	\$ 1,727,739.21
Real Estate Taxes	\$ 1,947.72
HBA Fees	\$ 250,000.00
Contingency	\$ -
Commission	\$ 50,000.00
Developer Fee	\$ 438,750.00
Subtotal Soft Costs	\$ 2,829,250.23

Total Private Improvement Costs	\$ 4,612,366.27
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Exhibit C-2
to Development Agreement
(Walworth Junction)

Sources and Uses – Public Infrastructure Improvements

Sources of Funding

Special Assessment Bonds (Net Amount)	\$ 3,073,661.83
Project TIF Bonds (Net Amount)	\$ 6,444,010.34
Developer Equity/Short Term Financing	\$ 4,447,682.02
Total Sources	\$ 13,965,354.19

Uses of Funding

<u>Hard Costs</u>	
Land Acquisition (including ROW and green space)	\$ 260,761.68
Environmental Remediation	\$ 4,516,248.57
Public Infrastructure	\$ 1,572,708.98
Soil Import required by Remediation	\$ 3,394,368.80
Retaining Walls	\$ 1,454,108.89
Gas Service	\$ 59,577.81
Underground Electric	\$ 123,507.01
Street Lights ROW	\$ 20,785.19
Street Trees	\$ 30,606.00
Street Signs	\$ -
Bond Insurance for Public ROW Improvements	\$ 675.00
Site Landscaping (ROW)	\$ 65,768.67
Site Landscaping entryway	\$ 83,447.06
Subtotal Hard Costs	\$ 11,582,563.66
<u>Soft Costs</u>	
Land Planning, Concept Plans, Traffic Research	\$ 6,232.25
Environmental Research: Phase 1 & testing for Phase 2	\$ 215,428.34
Engineering: Civil and Surveying	\$ 192,686.62
Legal: City, OEPA Environmental (NFA & CNS), Financing	\$ 330,151.78
Geotech: Initial investigation and Inspections during Dev	\$ 95,730.49
Environmental Insurance	\$ 2,951.00
Development Insurance	\$ 21,645.58
Environmental: Phase 2 Remediation Testing and OEPA submittals	\$ 243,688.88
Municipal Inspections	\$ 45,767.59
Overhead Management	\$ 1,227,833.00
Bond Insurance for Public ROW Improvements	\$ 675.00

Subtotal Soft Costs	\$ 2,382,790.53
Total Public Infrastructure Improvement Costs	\$ 13,965,354.19

*It is anticipated that the Totals Costs listed are the Net Bond Proceeds available for reimbursement of eligible project costs. It is understood that the Net Bond Proceeds may increase or decrease from the estimated amounts. The Director of DCED at her sole discretion may permit, via written approval, adjustments to the budget line items at the request of Developer should the Net Bond Proceeds be more or less than the estimated amount.

Exhibit D
to Development Agreement
(Walworth Junction)

Form of Restrictive Covenant

TO BE ATTACHED

Exhibit E
to Development Agreement
(Walworth Junction)

Additional Requirements

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "**Construction Workforce Goals**").

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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

(b) Requirement. If CMC Chapter 321 applies to the Project, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly

required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

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

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

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

(1) "Bid" means an offer in response to an invitation for bids to provide construction work.

(2) "Invitation to Bid" means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.

(3) "Trade Craft" means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.

(4) "Public Notification" means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the "scope of work" and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

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

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

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

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

(F) Small Business Enterprise Program.¹

(i) Applicability. The applicability of Municipal Code Chapter 323 (Small Business Enterprise Program) is limited to construction contracts in excess of \$5,000. Municipal Code Chapter 323 defines "contract" as "a contract in excess of \$5,000.00, except types of contracts listed by the City purchasing agent as exempt and approved by the City Manager, for (a) construction, (b) supplies, (c) services, or (d) professional services." It defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than \$4,000 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority." To the extent Municipal Code Chapter 323 does not apply to this Agreement, Developer is not subject to the various reporting requirements described in this Section (F).

(ii) Requirement. The City has an aspirational goal that 30% of its total dollars spent for construction and 15% of its total dollars spent for supplies/services and professional services be spent with Small Business Enterprises ("SBE"s), which include SBEs owned by minorities and women. Accordingly, subject to clause (i) above, Developer and its general contractor shall use its best efforts and take affirmative steps to assure that SBEs are utilized as sources of supplies, equipment, construction, and services, with the goal of meeting 30% SBE participation for construction contracts and 15% participation for supplies/services and professional services contracts. An SBE means a consultant, supplier, contractor or subcontractor who is certified as an SBE by the City in accordance with Cincinnati Municipal Code ("CMC") Chapter 323. (A list of SBEs may be obtained from the Department of Economic Inclusion or from the City's web page, <http://cincinnati.diversitycompliance.com>.) Developer and its general contractor may refer interested firms to the Department of Economic Inclusion for review and possible certification as an SBE, and applications may also be obtained from such web page. If the SBE program is applicable to this Agreement, as described in clause (i) above, Developer agrees to take (or cause its general contractor to take) at least the following affirmative steps:

(1) Including qualified SBEs on solicitation lists.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

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

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

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

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

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

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be

¹ Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.

necessary to reach the minimum percentage goals for SBE participation as set forth in Cincinnati Municipal Code Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

(i) Applicability. Chapter 325 of the Cincinnati Municipal Code (Equal Employment Opportunity) applies (a) where the City expends more than \$5,000 under a non-construction contract, or (b) where the City spends or receives over \$5,000 to (1) employ another party to construct public improvements, (2) purchase services, or (3) lease any real or personal property to or from another party. Chapter 325 of the Municipal Code does not apply where the contract is (a) for the purchase of real or personal property to or from another party, (b) for the provision by the City of services to another party, (c) between the City and another governmental agency, or (d) for commodities such as utilities.

(ii) Requirement. If this Agreement is subject to the provisions of Chapter 325 of the Cincinnati Municipal Code (the City of Cincinnati's Equal Employment Opportunity Program), the provisions thereof are hereby incorporated by reference into this Agreement.

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all any prevailing wage requirements that may be applicable to the Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such payments within twenty (20) days of demand therefor. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage Determination) hereto.

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Developer shall comply with the following provisions of the federal Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2). Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

(J) Prompt Payment. The provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", may apply to this Agreement. Municipal Code Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

(K) Conflict of Interest. Pursuant to Ohio Revised Code 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Ohio Means Jobs. If this Agreement constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "**Wage Enforcement Chapter**"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. Cincinnati Municipal Code Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

(ii) Required Contractual Language. Capitalized terms used, but not defined, in this clause (ii) have the meanings ascribed thereto in the Wage Enforcement Chapter.

(a) This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any Person who has an Agreement with the city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 326 of the Cincinnati Municipal Code) against the Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively "investigative bodies") to release to the City's Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City's request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

(d) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall include in its contracts with all Contractors language that requires the Contractors to provide the authorizations set forth in subsection (c) above and that further requires each Contractor to include in its contracts with Subcontractors those same obligations for each Subcontractor and each lower tier subcontractor.

(e) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall post a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to Cincinnati Municipal Code Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

(f) Under the Wage Enforcement provisions, the city shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.

(N) Americans With Disabilities Act: Accessibility.

(i) Applicability. Cincinnati City Council adopted Motion No. 201600188 on February 3, 2016 (the "Accessibility Motion"). This motion directs City administration, including DCED, to include language specifically requiring compliance with the Americans With Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "ADA"), and imposing certain minimum accessibility standards on City-subsidized projects regardless of whether there are arguably exceptions or reductions in accessibility standards available under the ADA or State law.

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which

the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then Developer shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of "qualifying incentives" for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines "qualifying incentives" as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, "qualifying incentives" does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised Code 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

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

(P) Certification as to Non-Debarment. Developer represents that neither it nor any of its principals is presently 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 debarred by any federal, state, or local government agency. If Developer or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, Developer shall be considered in default under this Agreement.

Addendum I
to
Additional Requirements Exhibit

City's Prevailing Wage Determination

TO BE ATTACHED