



City of Cincinnati

801 Plum Street
Cincinnati, OH 45202

Agenda - Final

Budget and Finance Committee

Councilmember David Mann, Chairperson
Councilmember Chris Seelbach, Vice Chair
Councilmember Jan-Michele Kearney
Councilmember Greg Landsman
Councilmember Jeff Pastor
Councilmember P.G. Sittenfeld
Councilmember Betsy Sundermann
Councilmember Wendell Young

Monday, September 28, 2020

1:00 PM

Council Chambers, Room 300

ROLL CALL

AGENDA

1. [202001536](#) REPORT, dated 9/16/2020, submitted by Paula Boggs Muething, Interim City Manager, regarding Department of Finance Reports for the Month Ended July 31, 2020.

Sponsors: City Manager
Attachments: [Report](#)
[Comparative Statement](#)
[Statement of Revenue](#)
[Statement of Balances](#)

2. [202001445](#) REPORT, dated 9/10/2020, submitted by Paula Boggs Muething, Interim City Manager, regarding FY 2020 Carryover to FY 2021.

Sponsors: City Manager
Attachments: [FY 2020 Carryover Report 9-20](#)

3. [202001583](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, Interim City Manager, on 9/23/2020, AUTHORIZING the transfer of the sum of \$2,729,245 from the unappropriated surplus of General Fund 050 to the unappropriated surplus of Working Capital Reserve Fund 754 for the purpose of increasing the City's working capital reserve; AUTHORIZING the transfer of the sum of \$2,811,948 from the unappropriated surplus of General Fund 050 to balance sheet reserve account no. 050x2585, "Economic Downturn Reserve," for the purpose of increasing the City's emergency reserve to 5.0% of FY 2020 General Fund revenues; AUTHORIZING the transfer of the sum of \$5,676,785 from the unappropriated surplus of General Fund 050 to balance sheet reserve account no. 050x2580, "Reserve for Weather Events, Other Emergency and One-Time Needs," for the purpose of providing resources for unanticipated emergencies including those caused by unusual weather events, in order to increase the City's reserve for this purpose to 2.0% of FY 2020 General Fund revenues; AUTHORIZING the appropriation of the sum of \$700,000 from the unappropriated surplus of the General Fund 050 to the Cincinnati Police Department's General Fund personnel operating budget account no. 050x222x7100 for the purpose of funding police visibility overtime as part of the City's violence reduction initiatives; AUTHORIZING the appropriation of the sum of \$100,000 from the unappropriated surplus of the General Fund 050 to the Law Department's General Fund personnel operating budget account no. 050x111x7100 for the purpose of funding an additional prosecuting attorney as part of the City's violence reduction initiatives; AUTHORIZING the appropriation of the sum of \$200,000 from the unappropriated surplus of the General Fund 050 to the City Manager's Office's General Fund non-personnel operating budget account no. 050x101x7200 for the purpose of funding a Safety Coordinators/Organizers Program as part of the City's violence reduction initiatives; AUTHORIZING the appropriation of the sum of \$330,000 from the unappropriated surplus of the General Fund 050 to the Cincinnati Police Department's General Fund non-personnel operating budget account no. 050x222x7400 for the purpose of funding tuition reimbursement expenses for sworn officers; AUTHORIZING the appropriation of the sum of \$100,000 from the unappropriated surplus of the General Fund 050 to the Tuition Reimbursement General Fund NonDepartmental non-personnel operating budget account no. 050x928x7400 for the purpose of funding tuition reimbursement expenses for General Fund employees; AUTHORIZING the appropriation of the sum of \$100,000 from the unappropriated surplus of General Fund 050 to the Law Department's non-personnel operating budget account no. 050x111x7200, for the purpose of providing funding for costs associated with the creation of the Housing Court; AUTHORIZING the appropriation of the sum of \$40,000 from the unappropriated surplus of the General Fund 050 to the Department of Finance's General Fund non-personnel operating budget account no.

050x131x7200 for the purpose of providing funding for contractual services related to increasing compliance with the City's Short-Term Rental Excise Tax; AUTHORIZING the transfer of the sum of \$339,245 from the unappropriated surplus of the General Fund 050 to the unappropriated surplus of Cincinnati Health District Fund 416; AUTHORIZING the appropriation of the sum of \$339,245 from the unappropriated surplus of Cincinnati Health District Fund 416 to the Cincinnati Health Department's Cincinnati Health District Fund non-personnel operating budget account no. 416x263x7200 for the purpose of providing funding for COVID-19 related expenses including the 2 cost of contact tracers and testing; AUTHORIZING the appropriation of the sum of \$95,000 from the unappropriated surplus of General Fund 050 to the Department of Recreation's General Fund non-personnel operating budget account no. 050x199x7200 for the purpose of providing funding to upgrade WIFI access at Recreation Centers to allow students to attend school virtually; AUTHORIZING the appropriation of the sum of \$50,000 from the unappropriated surplus of General Fund 050 to the City Manager's Office's General Fund non-personnel operating budget account no. 050x101x7200 for the purpose of replacing CitiCable's Video Playback System; REVISING the Classification and Salary Range Schedule for all employment classifications in Divisions 0, 5, 7 (LAW), 8, and 9 of Chapter 307 of the Cincinnati Municipal Code to reflect the new Classification and Salary Range Schedule for said classifications and to provide for a cost-of-living ("COLA") adjustment of 2.0% effective October 4, 2020; AUTHORIZING the appropriation of the sum of \$596,570 from the unappropriated surplus of General Fund 050 to various General Fund personnel operating budget accounts according to the attached Schedule of Transfer for the purpose of restoring merit pay for FY 2021 for non-represented employees and providing for a 2.0% COLA adjustment for non-represented employees effective October 4, 2020; AUTHORIZING the transfer of the sum of \$78,430 from the unappropriated surplus of General Fund 050 to the unappropriated surplus of Cincinnati Health District Fund 416; AUTHORIZING the transfer and appropriation of the sum of \$78,430 from the unappropriated surplus of Cincinnati Health District Fund 416 to the Cincinnati Health Department's Cincinnati Health District Fund personnel operating budget accounts according to the attached Schedule of Transfer for the purpose of restoring merit pay for FY 2021 for non-represented employees and providing for a 2.0% COLA adjustment for non-represented employees effective October 4, 2020; and further AUTHORIZING the appropriation of the sum of \$278,050 from the unappropriated surplus of the various Restricted Funds to personnel operating budget accounts of the various Restricted Funds according to the attached Schedule of Transfer for the purpose of restoring merit pay for nonrepresented employees and providing for a 2.0% COLA adjustment for non-represented employees effective

October 4, 2020.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachments](#)

4. [202001600](#) REPORT, dated 9/23/2020, submitted by Paula Boggs Muething, Interim City Manager, regarding Avondale Grocery Store. (Reference Document #202001164)

Sponsors: City Manager

Attachments: [Report](#)

5. [202001571](#) MOTION, submitted by Councilmember Mann, I move that West Eighth Street in Price Hill be returned to a safer place for neighborhood traffic, pedestrians and children by ending parking restrictions on the curbside lane during morning and evening commuting hours from Elberon to Nebraska. (STATEMENT ATTACHED)

Sponsors: Mann

Attachments: [MOTION 202001571](#)

6. [202001578](#) MOTION, submitted by Councilmember Mann, WE MOVE that the City administration immediately work with the Homeless Coalition, Strategies to End Homelessness and other appropriate stakeholders to address the challenges of homeless citizens and folks on the verge of becoming homeless as Winter approaches in the midst of the pandemic. (STATEMENT ATTACHED).

Sponsors: Mann

Attachments: [MOTION](#)

7. [202001435](#) MOTION, submitted by Councilmembers Young and Kearney, WE MOVE that the Administration amend the existing CRA agreement with 2347 Reading Road, LLC, an affiliate of Kingsley & Co., for its 2347 Reading Road hotel project to: (1) extend the project completion deadline through December 31, 2024, and (2) extend the outside tax year by which the abatement would commence through 2024. (STATEMENT ATTACHED)

Sponsors: Young and Kearney

Attachments: [MOTION 202001435](#)

8. [202001675](#) COMMUNICATION, dated 09/24/2020, submitted by Councilmember Mann, from James J. McGraw Jr., Keating Muething & Klekamp, PLL, regarding Pending Motion by Council Members Young and Kearney to Approve an Extension of the Project Completion Date of a CRA for 2347 Reading Road LLC.
- Sponsors:** Mann
- Attachments:** [202001675](#)
9. [202001676](#) COMMUNICATION, dated 09/22/2020, submitted by James J. McGraw, Jr., Keating Muething & Klekamp, PLL, regarding Pending Motion by Council Members Young and Kearney to Approve an Extension of the Project Completion Date of a CRA for 2347 Reading Road LLC.
- Sponsors:** Mann
- Attachments:** [Communication](#)
10. [202001677](#) COMMUNICATION, dated 09/22/2020, submitted by Councilmember Mann, from Carol Gibbs, Mt. Auburn Community Development Corporation (MACDC) regarding the Monday September 14 Mt. Auburn Community Council voted to rescind our support for Mr. Chin Ndukwe's request of an extension of his tax abatement on the hotel that he is building on Reading Rd. in Mt. Auburn.
- Sponsors:** Mann
- Attachments:** [Communication](#)
11. [202001327](#) MOTION, submitted by Councilmember Sundermann, dated 8/31/2020, WE MOVE the City Administration prioritize the payoff of the \$50 million operating debt for emergency financing which was incurred by the City of Cincinnati for unforeseen and other necessary expenses that have arisen due to the COVID-19 pandemic. Prioritization means earmarking any available closeout monies for the payment of the loan after the Funds Stabilization Policy distributions have been made to the General Fund Carryover Balance and Reserve for Weather and One Time Events per City Council Ordinance, then to the Economic Downturn Reserve Fund, Working Capital Reserves, and Additional Reserves. (STATEMENT ATTACHED)
- Sponsors:** Sundermann
- Attachments:** [MOTION 202001327](#)

12. [202001599](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, Interim City Manager, on 9/28/2020, AUTHORIZING the City Manager to execute a Funding Agreement with Fountain Place, LLC, a subsidiary of Cincinnati Center City Development Corporation (3CDC), providing for a forgivable loan of \$2,929,750 to fund redevelopment of 505 Vine Street (formerly known as Fountain Place) and proximate public infrastructure, located in the Central Business District of Cincinnati; ESTABLISHING new capital improvement program project account no. 980x164x211636, "Fountain Place Redevelopment - TIF" to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure; AUTHORIZING the transfer and appropriation of the sum of \$2,093,071.13 from unappropriated surplus of Downtown/OTR West Equivalent Fund 482 (Downtown/OTR West TIF District) to the newly-established capital improvement program account no. 980x164x211636, "Fountain Place Redevelopment - TIF," to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure; AUTHORIZING the transfer and appropriation of the sum of \$836,678.87 from the unappropriated surplus of Fountain Square West Trust Fund 156 to the newly-established capital improvement program project account no. 980x164x211636, "Fountain Place Redevelopment - TIF," to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure; and further DECLARING expenditures from such project account serve a public purpose

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachments](#)

13. [202001689](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, Interim City Manager, on 9/28/2020, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge) with 2330 VP Apartments, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 2332 Victory Parkway in the Walnut Hills neighborhood of Cincinnati, in connection with the remodeling of an existing building into approximately 35,173 square feet of residential space, approximately 6,400 square feet of office space, and approximately 1,240 square feet of commercial space, which remodeling shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total remodeling cost of approximately \$2,100,000.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment A](#)

14. [202001690](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, Interim City Manager, on 9/28/2020, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge) with Zeta House Corporation of Delta Delta Delta, thereby authorizing a 14-year tax exemption for 100% of the value of the improvements made to real property located at 2605 University Court in the CUF neighborhood of Cincinnati, in connection with the construction of a new sorority house at the University of Cincinnati, consisting of approximately 15,478 square feet of residential space, which construction shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total construction cost of approximately \$2,250,000.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Attachment A](#)

15. [202001691](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, Interim City Manager, on 9/28/2020, APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge) with 602 Main Street, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 216 E. Sixth Street and 600-610 Main Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 168,883 square foot hotel with 163 rooms, and approximately 9,500 square feet of commercial space, which remodeling shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total remodeling cost of approximately \$53,718,163.

Sponsors: City Manager

Attachments: [Transmittal](#)
[Ordinance](#)
[Exhibit A](#)

16. [202001695](#) ORDINANCE (EMERGENCY), dated 09/25/2020, submitted by Councilmember Landsman, AUTHORIZING the transfer of \$150,000 from the General Fund balance sheet reserve account no. 050x2580, "Reserve for Weather Related Events, Other Emergency and One-Time Needs," to the unappropriated surplus of General Fund 050; AUTHORIZING the transfer of \$150,000 from the unappropriated surplus of General Fund 050 to the Department of Community and Economic Development's General Fund non-personnel operating budget account no. analysis necessary to implement a tiered residential tax abatement program; and AUTHORIZING the designation of \$250,000 of the \$1,000,000 included in the Approved FY 2021 Budget Update for the Community Safety Response Program be designated for the Women Helping Women's Domestic Violence Enhanced Response Team (DVERT) program.

Sponsors: Landsman

Attachments: [Transmittal - 202001695](#)
[Emergency Ordinance - 202001695](#)

17. [202001696](#) ORDINANCE (EMERGENCY), dated 09/25/2020, submitted by Mayor Cranley, from Andrew W. Garth, Interim City Solicitor, ESTABLISHING new capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," for the purpose of partnering with Cincinnati Center City Development Corporation ("3CDC") to provide resources for the design and construction of new state-of-the-art recreation improvements in and around Findlay Park in the Over-The-Rhine neighborhood; AUTHORIZING the transfer and appropriation of the sum of \$50,000 from the unappropriated surplus of Downtown/OTR West Equivalent Fund 482 ("Downtown/OTR West TIF District") to newly created capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," for the purpose of providing resources for the design and construction of such recreation improvements; AUTHORIZING the City Manager to accept in-kind donations from 3CDC by providing design, community engagement, and development services to complete the "Findlay Park Recreation Improvements" valued at \$50,000; and DECLARING expenditures from capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," to be for a public purpose.

Sponsors:

Mayor

Attachments:[Transmittal - 202001696](#)[Emergency Ordinance 202001696](#)

ADJOURNMENT

September 16, 2020

TO: Mayor and Members of City Council **202001536**

FROM: Paula Boggs Muething, Interim City Manager

SUBJECT: Department of Finance Reports for the Month Ended July 31, 2020

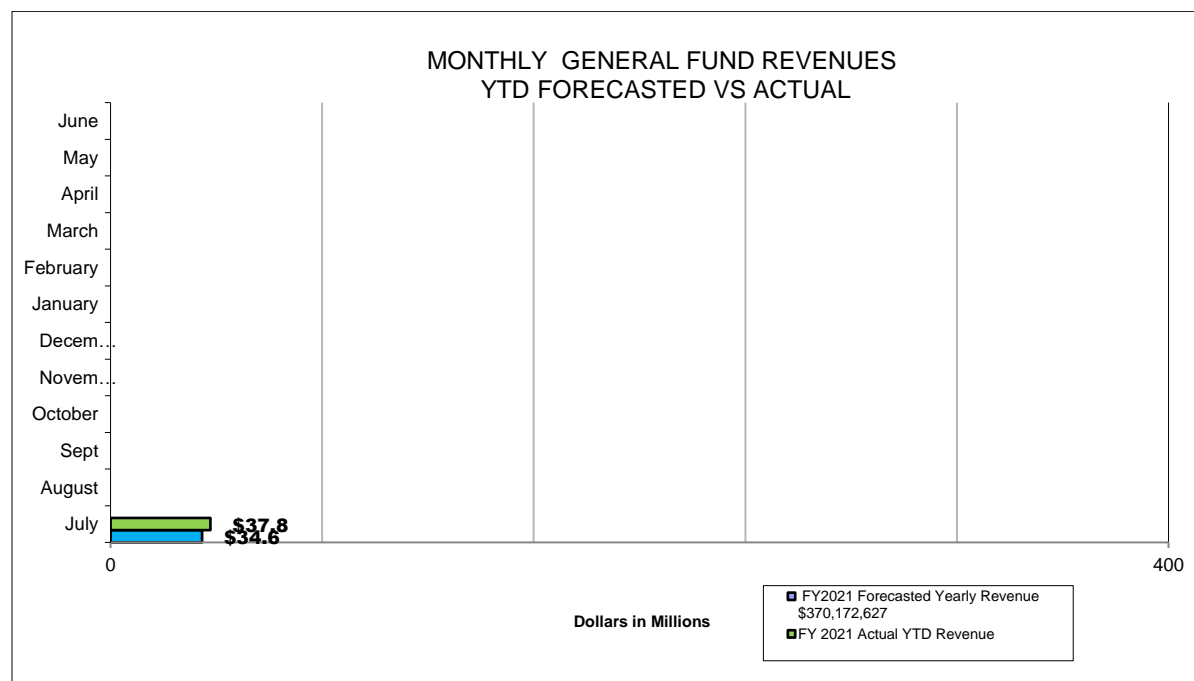
JULY 2020
MONTHLY FINANCIAL REPORTS

The following report provides an update on the City of Cincinnati's financial condition as of the month ending July 31, 2020. This report represents the first report for the new 2021 fiscal year, ending June 30, 2021. Variances are based on current year estimates and prior year activity in attached schedules.

A more detailed explanation of revenues and expenditures is attached for review, including reports comparing current year actual revenue vs. forecasted revenue and prior year actual revenue vs. current year actual revenue. Both of those reports are presented on a monthly and year to date basis.

Beginning with the September report there will be a new format which will be a joint report between the Finance department and the Budget office. This new format is intended to give a more complete reporting of the revenues and expenditures as monitored by the Budget office.

The chart below portrays the performance of actual revenue collected against the forecasted revenue collected through July 31, 2020 and shows that actual revenues of \$37.8 million was above forecasted revenues of \$34.6 million by \$3.2 million.



The major revenue components of the General Fund are listed in the table below. This table highlights the year to date variance (favorable and unfavorable) in General Fund revenue collections as compared to forecasted revenue collections. Each major category that differs significantly from forecasted collections will be discussed in further detail.

GENERAL FUND REVENUE SOURCES		
	FAVORABLE VARIANCE	(UNFAVORABLE) VARIANCE
General Property Tax		(\$6,805)
City Income Tax	\$2,466,659	
Admission Tax		(\$43,326)
Short Term Rental Excise Tax	\$10,907	
Licenses & Permits		(\$198,914)
Fines, Forfeitures, & Penalties		(\$359,817)
Investment Income		
Local Government	\$62,663	
Casino	\$100,326	
Police		(\$55,305)
Buildings and Inspections	\$207,158	
Fire	\$176,462	
Parking Meter		(\$115,886)
Other	\$999,327	
	\$4,023,501	(\$780,053)
Difference	\$3,243,448	

General Fund (favorable variance) is \$3.2 million above the amount forecasted thru July in the FY 2021 Budget. This is the first month's report for the new fiscal year. What follows is an explanation of significant variances of individual General Fund revenue components.

Income Taxes (favorable variance) is \$2.5 million above the forecasted amount. This is the first month of the new fiscal year and as such there is not enough data to discern any trends. However, overall, this variance represents an 45% increase over last year at this time due to the tax deadline being shifted from April 15th to July 15th. This shift is factored in the July projection. Employer withholdings are slightly below prior year collections. The tax component represents 71% of the total General Fund percentage, Administration continues to evaluate and watch for trends.

License & Permits (unfavorable variance) is down \$199k. The unfavorable variance is due to the current COVID19 overall slowdown.

Fines, Forfeitures & Penalties (unfavorable variance) is down \$360k. Parking fines are lower than estimated due to the lack of traffic at the meters resulting in less tickets. If this trend continues, the estimates in this revenue category will not be met for the fiscal year.

Casino (favorable variance) is up \$100k. Due to the COVID19 epidemic the FY 2021 revenue estimate was adjusted downward to account for the casino closures and restrictions on patrons permitted on the properties once they reopened.

Buildings and Inspections (favorable variance) is up \$207k. FY 2021 is continuing to realize an increase similar to FY 2020. This favorable variance continued in July.

Fire (favorable variance) is up \$176k. This favorable variance is a result of higher than expected collections related to EMS runs.

Other (favorable variance) is up \$999k. The majority of this is a result of revenue received by the Fire Department from a SAFER grant as a reimbursement for prior year expenses.

Restricted Funds:

Water Works Fund (favorable variance) is up \$ 476k. For July, the favorable variance was 3.3% over projections; however, down 2.8% when compared to the prior year. This is only the first month of reporting for the fiscal year, Administration will continue to monitor and report, as necessary.

Parking Meter (unfavorable variance) is down \$109k. The unfavorable variance is due reduced economic activity as a result of the COVID-19 pandemic.

Municipal Golf (favorable variance) is up \$189k. The City has experienced an increase in the utilization of the golf courses as people are looking for outside activities during the pandemic.

Sawyer Point (unfavorable variance) is down \$53k. The unfavorable variance is a result of less economic activity at the park as a result of the pandemic restrictions.

Recreation Special (unfavorable variance) is down \$104k. The Cincinnati Recreation Commission has experienced a reduction in revenue due to the cancellation of recreation center programs as a result of the pandemic.

CAGIS (unfavorable variance) is down \$119k. The unfavorable variance is due to the continued timing of billing and receipt of revenue. The department carefully watches the fund expenses to ensure they do not exceed revenues in a given fiscal year.

CLEAR (unfavorable variance) is down \$371k. The department continues to monitor the fund to ensure that expenditures do not exceed revenue in the fiscal year.

Submitted herewith are the following Department of Finance reports:

1. Comparative Statement of Revenue and Expenditures (Actual, Forecast and Prior Year) as of July 31, 2020.
2. Statement of Balances in the various funds as of July 31, 2020.

By approval of this report, City Council appropriates the revenues received in the various restricted funds on the attached Statement of Balances and as stated in greater detail on the records maintained by the Department of Finance, Division of Accounts & Audits. Such revenues are to be expended in accordance with the purposes for which the funds were established.

c: Christopher A. Bigham, Assistant City Manager
Karen Alder, Finance Director

September 10, 2020

TO: Mayor and Members of City Council
FROM: Paula Boggs Muething, Interim City Manager
SUBJECT: FY 2020 Carryover to FY 2021 Report

The following report provides an overview of the City of Cincinnati's General Fund FY 2020 year-end balance and application of the Stabilization Funds Policy adopted by the City Council. This report also includes FY 2021 Budget Update considerations for discussion.

General Fund 2020 Fiscal Year-End Balance and One-Time Uses

The FY 2021 Approved Budget Update includes \$10.2 million in emergency short-term note proceeds as authorized by Section 133-12 of the Ohio Revised Code to balance the budget. The City Council passed an ordinance that directs the Administration to use any additional available dollars in place of the emergency short-term note proceeds as part of the FY 2021 Budget Update. The City recently received \$7.7 million in additional Coronavirus Aid, Relief, and Economic Security (CARES) Act dollars. This amount will be applied to cover budgeted expenses in place of the emergency short-term note secured in May. The remaining balance of \$2.5 million budgeted in the FY 2021 Budget Update will be repaid from the Economic Downturn Reserve if additional COVID related support dollars are not received.

As shown in the table below, the City's General Fund ended FY 2020 with a carryover amount of \$20.3 million including \$6.2 million net FY 2019 carryover. The table includes a breakdown of how the carryover was applied to reserves and one-time uses.

Application of FY 2020 Carryover Balance

Cash Basis Carryover Balance FY 2020	\$	20,310,440
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Uses of Carryover Balance

Application of Stabilization Funds Policy:

Less General Fund Carryover Balance (1.5% of operating revenue)	\$	6,363,217
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Less Transfers to Reserve Accounts:

General Fund Contingency Account (2.00% of operating revenue)	\$	5,676,785	
Economic Downturn Reserve (pledged for short-term note)	\$2,500,000		
Economic Downturn Reserve (additional waterfall amount)	\$ 311,948		
Economic Downturn Reserve Total (1.43% of operating revenue)	\$ 2,811,948		
Working Capital Reserve (8.36% of operating revenue)	\$ 2,729,245		

Total Reserve Transfer from Stabilization Funds Policy	\$	11,217,978
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Carryover Balance Less Total Applied to Stabilization Funds Policy	\$	2,729,245
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Less One-Time Uses:

Police Violence Reduction Initiatives	\$	1,000,000	
Tuition Reimbursement	\$	430,000	
Merits and COLAs	\$	675,000	
Short Term Rental Contract	\$	40,000	
Housing Court Startup	\$	100,000	
COVID-19 Costs Health	\$	339,245	
COVID-19 Costs Recreation	\$	95,000	
CitiCable Video Playback System	\$	50,000	
Balance Available	\$	-	

Uses of Carryover Balances

Application of Stabilization Funds Policy

The Government Finance Officers Association (GFOA) recommends that local governments establish a formal policy on the level of unrestricted fund balance that should be maintained in the General Fund. The City's Stabilization Funds Policy, approved by the City Council in 2015 and revised in 2019, references the GFOA's recommended two months of operating revenues, or 16.7%.

Per the Revised Stabilization Funds Policy and also setting aside dollars to cover the ORC Section 133-12 loan, the following transfers will be requested via ordinance: \$2.7 million transfer to the Working Capital Reserve, \$5.7 million to the General Fund Contingency Account and \$2.8 million to the Economic Downturn Reserve Account. Based on the policy, \$6.4 million will remain in the General Fund balance. Please note below that in FY 2019 the Emergency Reserve Account was rolled into the General Fund Contingency Account and a new Economic Downturn Reserve Account was created in accordance with the revised policy.

FY 2019 Balances after Close-out Adjustments

Annual Revenue	\$413,963,769	
Working Capital Reserve	\$32,068,572	7.75%
General Fund Contingency Account	\$8,279,275	2.00%
Economic Downturn Reserve	\$3,240,048	0.78%
General Fund Carryover Balance (After Uses)	<u>\$6,209,457</u>	<u>1.50%</u>
Total Combined Reserves	\$49,797,352	12.03%

Projected Balances FY 2020 After Proposed Transfers

Annual Revenue		\$424,214,447	
Working Capital Reserve		\$35,447,902	8.36%
General Fund Contingency Account		\$8,484,289	2.00%
Economic Downturn Reserve (pledged for short-term note)	\$2,500,000		
Economic Downturn Reserve (additional balance)	<u>\$3,551,949</u>		
Total Economic Downturn Reserve		\$6,051,949	1.43%
General Fund Carryover Balance (After Uses)		<u>\$6,363,217</u>	<u>1.50%</u>
Total Combined Reserves (\$2.5 million pledged for short-term note)		\$56,347,357	13.28%

Overall combined reserves have increased from 12.03% in FY 2019 to 13.28% in FY 2020, an increase of 1.25%. The City of Cincinnati is committed to managing the City's operations in a prudent, responsible way through the adherence to management disciplines to ensure fiscal stability. One of those methods is the Stabilization Funds Policy. The City must plan for and be prepared to mitigate fluctuations in demand for services as well as changes in revenues influenced by the economy and budgetary decisions made by the State of Ohio and the federal government. The City must be prepared for unforeseen events that could result in additional expenditure requirements or loss of revenues by maintaining prudent levels of fund balance and reserves as set forth in the policy adopted in 2015 and revised in 2019. The GFOA's recommendation of 16.7% reserves is the appropriate level we are striving toward.

The rating agencies have emphasized the importance of maintaining appropriate reserves to ensure financial stability and to retain the current bond ratings. The Administration has committed to the rating agencies' plan to build the reserve balances each year until reaching the goal of 16.7% as recommended by the GFOA.

Carryover Uses

As part of the updated Stabilization Funds Policy, \$2,729,245 is available for one-time uses for FY 2021. Below are the Administration's recommendations on how to use these dollars with the highest priority to reduce the current spike in the crime in the City.

Violence Reduction Initiatives (\$1,000,000):

The Administration recommends funding for three programs to address the spike in crime:

- Police Visibility Overtime (PVO) (\$700,000) – One of the most effective solutions to address short term spikes in crime is to have officer presence in the areas where crime has spiked. PVO would be strategically deployed to address the increase in crime to maintain a proactive presence to deter crime.
- Add One FTE District Attorney Position (\$100,000) – The City Solicitor’s Office currently allocates one full-time City prosecuting attorney to be a Special Assistant to the US Attorney’s Office (SAUSA) focused on local law enforcement efforts to address gun violence. Funding an additional prosecuting attorney with the City Solicitor’s Office would allow the City to double its efforts with two additional prosecuting attorneys working with the SAUSA and the U.S. Attorney’s Office to combat and prosecute gun violence. Involvement by the City’s attorneys in the federal effort strengthens and maintains the critical, working relationships between local and federal agencies.
- Safety Coordinators/Organizers Program (\$200,000) – Reporting to the Division Manager of Criminal Justice Initiatives within the Office of the City Manager, Safety Coordinators/Organizers would be contractors that will lead collaborative efforts to improve safety and quality of life in priority neighborhoods, acting as a liaison between residents, community-based organizations, business owners, developers and police/prosecutors. The overarching goal is to integrate the resources of people and institutions which influence crime and perceptions within neighborhoods to uncover more strategic and effective remedies for safety problems and community engagement to ensure long-term and sustainable results.

Below is an explanation of additional high priority uses of the remaining FY 2020 Fund Balance:

- Tuition Reimbursement (\$430,000) – The Fraternal Order of Police (FOP) was successful in an arbitration related to the elimination of tuition reimbursement for FY 2020. As a result, an additional need of \$330,000 is necessary to pay the FY 2020 tuition reimbursement costs and the projected need for FY 2021. This request also includes the remaining \$100,000 to be appropriated to a General Fund non-departmental account for all General Fund staff to be able to participate in the tuition reimbursement program.
- Reinstating Non-Represented Employees’ Merit Pay and COLAs (\$675,000) – The Approved FY 2021 Budget Update included a freeze of merit pay and cost-of-living-adjustments (COLAs) for all non-represented staff. This was the last item eliminated in the budget to balance and creates pay inequities within the City. Reinstating merit pay for Fiscal Year 2021 and a 2.0% COLA effective October 4, 2020 will create equity among the union and non-represented ranks.
- Short-Term Rental Contractual Services (\$40,000) – The City implemented a Short-Term Rental Excise Tax and there is a need for an outside service to verify that all short-term rental owners are complying with the new laws. This service would provide the City with a list of all owners and confirm compliance.
- Housing Court Startup (\$100,000) – The City continues to stand up the Housing Court function and funds were allocated in FY 2020 that were unspent. These additional funds would be used to continue the process with the goal of standing up the City function by the end of FY 2021.
- COVID-19 Expenditures, Health (\$339,000) – Funds would be allocated to the Cincinnati Health Department to address any additional COVID-19 expenditures that are not funded with grant dollars and would include additional costs for contact tracing and testing.

- COVID-19 Expenditures, Recreation (\$95,000) – The Cincinnati Recreation Commission (CRC) is offering access to the internet for students as part of full day camp services during the pandemic. The current internet service is not capable of handling the additional load so these funds would be used for investment in WIFI access at all recreation centers to allow students to attend school virtually.
- CitiCable Video Playback System, City Manager's Office (\$50,000) – CitiCable is currently unable to program or broadcast its Public and Educational (P&E) Channels (Public, Education and Religion channels) due to equipment failure. The City of Cincinnati will need to procure a new Video Playback System.

2021 Pending Matters

There are several budget concerns for FY 2021 and beyond that are noteworthy. These include the following:

- COVID-19 Budget Impact – Due to the downturn in income tax and other sources of revenues related to the COVID-19 pandemic, the Approved FY 2021 Budget Update was balanced but not structurally balanced due to the reliance on \$43.9 million in one-time funds, including a loan related to ORC Section 133.12 in the amount of \$10.2 million, Coronavirus Aid, Relief, and Economic Security (CARES) Act funding from the State of Ohio and Hamilton County in the amount of \$32.0 million, and one-time transfers of \$1.7 million. While the closeout process has identified funds to pay off the loan, there is still uncertainty as to additional dollars available for COVID-19 related unbudgeted expenditures. The Administration will monitor the situation closely but will likely need additional State and Federal dollars to assist with these unbudgeted expenditures during FY 2021.
- FY 2022 Projected Deficit – The Approved FY 2021 Budget Update document includes a General Fund long-term financial forecast and shows a preliminary deficit of \$7.2 million for FY 2022. This assumes a 2% increase for personnel and a 10% increase for healthcare. If contract negotiations result in higher increases, the projected deficit will increase.
- Stabilization Funds – The Stabilization Funds Policy, which was adopted by the City Council in June 2015 and amended in June 2019, directs specific amounts of funds to reserves based on estimated revenues. Specifically, the policy directive addresses four components: Working Capital Reserve, General Fund Contingency Account, Economic Downturn Reserve Account and the General Fund Carryover Balance. Overall, the Combined Reserves were increased from 12.03% to 13.28%.
- Ratings Agencies – Moody's Investors Services' current assigned rating is Aa2 for the City's outstanding general obligation unlimited tax (GOULT) debt, and the rating is Aa3 on the City's outstanding non-tax revenue debt. The outlook is stable. Standard & Poor's Ratings Services' current assigned rating is AA for the City's long-term unlimited-tax general obligation (GO) bonds and an AA long-term rating on the City's non-tax revenue bonds. The outlook is stable.
- Income Tax – It should be stressed that the City remains over reliant on income tax revenue. The FY 2021 Income Tax estimate includes a 10% increase for FY 2022. If income tax does not rebound as estimated, the deficit will increase for FY 2022.

Recommendation

The Administration requests this report be approved and filed and will request the accompanying Ordinance for approval.

c: Christopher A. Bigham, Assistant City Manager
Karen Alder, Finance Director

September 23, 2020

202001583

To: Mayor and Members of City Council

From: Paula Boggs Muething, Interim City Manager

**Subject: Emergency Ordinance – FY 2020 Year-End Report
Recommended Transfers and Appropriations**

Attached is an Emergency Ordinance captioned:

AUTHORIZING the transfer of the sum of \$2,729,245 from the unappropriated surplus of General Fund 050 to the unappropriated surplus of Working Capital Reserve Fund 754 for the purpose of increasing the City's working capital reserve; **AUTHORIZING** the transfer of the sum of \$2,811,948 from the unappropriated surplus of General Fund 050 to balance sheet reserve account no. 050x2585, "Economic Downturn Reserve," for the purpose of increasing the City's emergency reserve to 5.0% of FY 2020 General Fund revenues; **AUTHORIZING** the transfer of the sum of \$5,676,785 from the unappropriated surplus of General Fund 050 to balance sheet reserve account no. 050x2580, "Reserve for Weather Events, Other Emergency and One-Time Needs," for the purpose of providing resources for unanticipated emergencies including those caused by unusual weather events, in order to increase the City's reserve for this purpose to 2.0% of FY 2020 General Fund revenues; **AUTHORIZING** the appropriation of the sum of \$700,000 from the unappropriated surplus of the General Fund 050 to the Cincinnati Police Department's General Fund personnel operating budget account no. 050x222x7100 for the purpose of funding police visibility overtime as part of the City's violence reduction initiatives; **AUTHORIZING** the appropriation of the sum of \$100,000 from the unappropriated surplus of the General Fund 050 to the Law Department's General Fund personnel operating budget account no. 050x111x7100 for the purpose of funding an additional prosecuting attorney as part of the City's violence reduction initiatives; **AUTHORIZING** the appropriation of the sum of \$200,000 from the unappropriated surplus of the General Fund 050 to the City Manager's Office's General Fund non-personnel operating budget account no. 050x101x7200 for the purpose of funding a Safety Coordinators/Organizers Program as part of the City's violence reduction initiatives; **AUTHORIZING** the appropriation of the sum of \$330,000 from the unappropriated surplus of the General Fund 050 to the Cincinnati Police Department's General Fund non-personnel operating budget account no. 050x222x7400 for the purpose of funding tuition reimbursement expenses for sworn officers; **AUTHORIZING** the

appropriation of the sum of \$100,000 from the unappropriated surplus of the General Fund 050 to the Tuition Reimbursement General Fund Non-Departmental non-personnel operating budget account no. 050x928x7400 for the purpose of funding tuition reimbursement expenses for General Fund employees; AUTHORIZING the appropriation of the sum of \$100,000 from the unappropriated surplus of General Fund 050 to the Law Department's non-personnel operating budget account no. 050x111x7200, for the purpose of providing funding for costs associated with the creation of the Housing Court; AUTHORIZING the appropriation of the sum of \$40,000 from the unappropriated surplus of the General Fund 050 to the Department of Finance's General Fund non-personnel operating budget account no. 050x131x7200 for the purpose of providing funding for contractual services related to increasing compliance with the City's Short-Term Rental Excise Tax; AUTHORIZING the transfer of the sum of \$339,245 from the unappropriated surplus of the General Fund 050 to the unappropriated surplus of Cincinnati Health District Fund 416; AUTHORIZING the appropriation of the sum of \$339,245 from the unappropriated surplus of Cincinnati Health District Fund 416 to the Cincinnati Health Department's Cincinnati Health District Fund non-personnel operating budget account no. 416x263x7200 for the purpose of providing funding for COVID-19 related expenses including the cost of contact tracers and testing; AUTHORIZING the appropriation of the sum of \$95,000 from the unappropriated surplus of General Fund 050 to the Department of Recreation's General Fund non-personnel operating budget account no. 050x199x7200 for the purpose of providing funding to upgrade WIFI access at Recreation Centers to allow students to attend school virtually; AUTHORIZING the appropriation of the sum of \$50,000 from the unappropriated surplus of General Fund 050 to the City Manager's Office's General Fund non-personnel operating budget account no. 050x101x7200 for the purpose of replacing CitiCable's Video Playback System; REVISING the Classification and Salary Range Schedule for all employment classifications in Divisions 0, 5, 7 (LAW), 8, and 9 of Chapter 307 of the Cincinnati Municipal Code to reflect the new Classification and Salary Range Schedule for said classifications and to provide for a cost-of-living ("COLA") adjustment of 2.0% effective October 4, 2020; AUTHORIZING the appropriation of the sum of \$596,570 from the unappropriated surplus of General Fund 050 to various General Fund personnel operating budget accounts according to the attached Schedule of Transfer for the purpose of restoring merit pay for FY 2021 for non-represented employees and providing for a 2.0% COLA adjustment for non-represented employees effective October 4, 2020; AUTHORIZING the transfer of the sum of \$78,430 from the unappropriated surplus of General Fund 050 to the unappropriated surplus of Cincinnati Health District Fund 416; AUTHORIZING the transfer and appropriation of the sum of \$78,430 from the

unappropriated surplus of Cincinnati Health District Fund 416 to the Cincinnati Health Department's Cincinnati Health District Fund personnel operating budget accounts according to the attached Schedule of Transfer for the purpose of restoring merit pay for FY 2021 for non-represented employees and providing for a 2.0% COLA adjustment for non-represented employees effective October 4, 2020; and further AUTHORIZING the appropriation of the sum of \$278,050 from the unappropriated surplus of the various Restricted Funds to personnel operating budget accounts of the various Restricted Funds according to the attached Schedule of Transfer for the purpose of restoring merit pay for non-represented employees and providing for a 2.0% COLA adjustment for non-represented employees effective October 4, 2020.

This Emergency Ordinance would authorize the various transfers and appropriations as recommended in the FY 2020 Carryover to FY 2021 Report Item #202001445 which includes the following transfers and appropriations:

Application of FY 2020 Carryover Balance

Cash Basis Carryover Balance FY 2020		\$ 20,310,440
Uses of Carryover Balance		
Application of Stabilization Funds Policy:		
Less General Fund Carryover Balance (1.5% of operating revenue)		\$ 6,363,217
Less Transfers to Reserve Accounts:		
General Fund Contingency Account (2.00% of operating revenue)	\$ 5,676,785	
Economic Downturn Reserve (pledged for short-term note)	\$ 2,500,000	
Economic Downturn Reserve (additional waterfall amount)	<u>\$ 311,948</u>	
Economic Downturn Reserve Total (1.43% of operating revenue)	\$ 2,811,948	
Working Capital Reserve (8.36% of operating revenue)	<u>\$ 2,729,245</u>	
Total Reserve Transfer from Stabilization Funds Policy		\$ 11,217,978
Carryover Balance Less Total Applied to Stabilization Funds Policy		<u>\$ 2,729,245</u>
Less One-Time Uses:		
Police Violence Reduction Initiatives		\$ 1,000,000
Tuition Reimbursement		\$ 430,000
Merits and COLAs		\$ 675,000
Short Term Rental Contract		\$ 40,000
Housing Court Startup		\$ 100,000
COVID-19 Costs Health		\$ 339,245
COVID-19 Costs Recreation		\$ 95,000
CitiCable Video Playback System		<u>\$ 50,000</u>
Balance Available		<u>\$ -</u>

Additional information regarding the overview of the City of Cincinnati's financial condition for the fiscal year (FY) ending June 30, 2020 can be found in the Department of Finance Reports for the Fiscal Year Ended June 30, 2020 (unaudited) Item #202001447.

The reason for the emergency is the immediate need to accomplish the authorized transfers and appropriations so that the funding described herein is in place immediately and so that the necessary expenditures described herein may be made as soon as possible.

The Administration recommends passage of this Emergency Ordinance.

cc: Christopher A. Bigham, Assistant City Manager
Karen Alder, Finance Director

Attachments

EMERGENCY

LES

- 2020

AUTHORIZING the transfer of the sum of \$2,729,245 from the unappropriated surplus of General Fund 050 to the unappropriated surplus of Working Capital Reserve Fund 754 for the purpose of increasing the City's working capital reserve; **AUTHORIZING** the transfer of the sum of \$2,811,948 from the unappropriated surplus of General Fund 050 to balance sheet reserve account no. 050x2585, "Economic Downturn Reserve," for the purpose of increasing the City's emergency reserve to 5.0% of FY 2020 General Fund revenues; **AUTHORIZING** the transfer of the sum of \$5,676,785 from the unappropriated surplus of General Fund 050 to balance sheet reserve account no. 050x2580, "Reserve for Weather Events, Other Emergency and One-Time Needs," for the purpose of providing resources for unanticipated emergencies including those caused by unusual weather events, in order to increase the City's reserve for this purpose to 2.0% of FY 2020 General Fund revenues; **AUTHORIZING** the appropriation of the sum of \$700,000 from the unappropriated surplus of the General Fund 050 to the Cincinnati Police Department's General Fund personnel operating budget account no. 050x222x7100 for the purpose of funding police visibility overtime as part of the City's violence reduction initiatives; **AUTHORIZING** the appropriation of the sum of \$100,000 from the unappropriated surplus of the General Fund 050 to the Law Department's General Fund personnel operating budget account no. 050x111x7100 for the purpose of funding an additional prosecuting attorney as part of the City's violence reduction initiatives; **AUTHORIZING** the appropriation of the sum of \$200,000 from the unappropriated surplus of the General Fund 050 to the City Manager's Office's General Fund non-personnel operating budget account no. 050x101x7200 for the purpose of funding a Safety Coordinators/Organizers Program as part of the City's violence reduction initiatives; **AUTHORIZING** the appropriation of the sum of \$330,000 from the unappropriated surplus of the General Fund 050 to the Cincinnati Police Department's General Fund non-personnel operating budget account no. 050x222x7400 for the purpose of funding tuition reimbursement expenses for sworn officers; **AUTHORIZING** the appropriation of the sum of \$100,000 from the unappropriated surplus of the General Fund 050 to the Tuition Reimbursement General Fund Non-Departmental non-personnel operating budget account no. 050x928x7400 for the purpose of funding tuition reimbursement expenses for General Fund employees; **AUTHORIZING** the appropriation of the sum of \$100,000 from the unappropriated surplus of General Fund 050 to the Law Department's non-personnel operating budget account no. 050x111x7200, for the purpose of providing funding for costs associated with the creation of the Housing Court; **AUTHORIZING** the appropriation of the sum of \$40,000 from the unappropriated surplus of the General Fund 050 to the Department of Finance's General Fund non-personnel operating budget account no. 050x131x7200 for the purpose of providing funding for contractual services related to increasing compliance with the City's Short-Term Rental Excise Tax; **AUTHORIZING** the transfer of the sum of \$339,245 from the unappropriated surplus of the General Fund 050 to the unappropriated surplus of Cincinnati Health District Fund 416; **AUTHORIZING** the appropriation of the sum of \$339,245 from the unappropriated surplus of Cincinnati Health District Fund 416 to the Cincinnati Health Department's Cincinnati Health District Fund non-personnel operating budget account no. 416x263x7200 for the purpose of providing funding for COVID-19 related expenses including the

cost of contact tracers and testing; AUTHORIZING the appropriation of the sum of \$95,000 from the unappropriated surplus of General Fund 050 to the Department of Recreation's General Fund non-personnel operating budget account no. 050x199x7200 for the purpose of providing funding to upgrade WIFI access at Recreation Centers to allow students to attend school virtually; AUTHORIZING the appropriation of the sum of \$50,000 from the unappropriated surplus of General Fund 050 to the City Manager's Office's General Fund non-personnel operating budget account no. 050x101x7200 for the purpose of replacing CitiCable's Video Playback System; REVISING the Classification and Salary Range Schedule for all employment classifications in Divisions 0, 5, 7 (LAW), 8, and 9 of Chapter 307 of the Cincinnati Municipal Code to reflect the new Classification and Salary Range Schedule for said classifications and to provide for a cost-of-living ("COLA") adjustment of 2.0% effective October 4, 2020; AUTHORIZING the appropriation of the sum of \$596,570 from the unappropriated surplus of General Fund 050 to various General Fund personnel operating budget accounts according to the attached Schedule of Transfer for the purpose of restoring merit pay for FY 2021 for non-represented employees and providing for a 2.0% COLA adjustment for non-represented employees effective October 4, 2020; AUTHORIZING the transfer of the sum of \$78,430 from the unappropriated surplus of General Fund 050 to the unappropriated surplus of Cincinnati Health District Fund 416; AUTHORIZING the transfer and appropriation of the sum of \$78,430 from the unappropriated surplus of Cincinnati Health District Fund 416 to the Cincinnati Health Department's Cincinnati Health District Fund personnel operating budget accounts according to the attached Schedule of Transfer for the purpose of restoring merit pay for FY 2021 for non-represented employees and providing for a 2.0% COLA adjustment for non-represented employees effective October 4, 2020; and further AUTHORIZING the appropriation of the sum of \$278,050 from the unappropriated surplus of the various Restricted Funds to personnel operating budget accounts of the various Restricted Funds according to the attached Schedule of Transfer for the purpose of restoring merit pay for non-represented employees and providing for a 2.0% COLA adjustment for non-represented employees effective October 4, 2020.

WHEREAS, in 2015, the City Council adopted a Stabilization Funds Policy to define appropriate funding for the City's various reserve funds; and

WHEREAS, in accordance with the terms of the Stabilization Funds Policy, the Administration recommends transferring funds into the Working Capital Reserve Fund and into two separate balance sheet reserve accounts: "Economic Downturn Reserve," and "Reserve for Weather Events, Other Emergency and One-Time Needs"; and

WHEREAS, Council wishes to authorize an appropriation to the Cincinnati Police Department in the amount of \$700,000 to provide funding for police visibility overtime as part of the City's violence reduction initiatives; and

WHEREAS, Council wishes to authorize an appropriation to the Law Department in the amount of \$100,000 to provide funding for an additional prosecuting attorney as part of the City's violence reduction initiatives; and

WHEREAS, Council wishes to authorize an appropriation to the City Manager's Office in the amount of \$200,000 to provide funding for a Safety Coordinators/Organizers Program as part of the City's violence reduction initiatives; and

WHEREAS, Council wishes to authorize an appropriation to the Cincinnati Police Department in the amount of \$330,000 to provide funding for tuition reimbursement expenses for sworn officers for both FY 2020 and FY 2021, as a result of a successful arbitration by the Fraternal Order of Police (FOP); and

WHEREAS, Council wishes to authorize an appropriation to the General Fund Tuition Reimbursement Non-Departmental Account in the amount of \$100,000 to provide funding for tuition reimbursement expenses for General Fund employees; and

WHEREAS, Council wishes to authorize an appropriation to the Law Department in the amount of \$100,000 to provide funding for costs associated with the creation of the Housing Court; and

WHEREAS, Council wishes to authorize an appropriation to the Finance Department in the amount of \$40,000 for contractual services related to increasing compliance with the City's Short-Term Rental Excise Tax; and

WHEREAS, Council wishes to authorize an appropriation to the Cincinnati Health Department in the amount of \$339,245 for COVID-19 related expenses which include the cost of contact tracers and testing; and

WHEREAS, Council wishes to authorize an appropriation to the Department of Recreation in the amount of \$95,000 to upgrade WIFI access at Recreation Centers to allow students to attend school virtually; and

WHEREAS, Council wishes to authorize an appropriation to the Office of Communications in the City Manager's Office in the amount of \$50,000 to provide funding to replace CitiCable's Video Playback System; and

WHEREAS, the FY 2021 Operating Budget Update did not include funding for merit pay or a cost-of-living adjustment ("COLA") for non-represented employees, and Council wishes to restore merit pay for FY 2021 and provide a 2.0% COLA adjustment to non-represented employees effective October 4, 2020; and

WHEREAS, the Classification and Salary Range Schedule for all employment classifications in Divisions 0, 5, 7 (LAW), 8, and 9 of Chapter 307 of the Cincinnati Municipal Code need to be revised to reflect the new Classification and Salary Range Schedule for said classifications in order to provide for a COLA adjustment of 2.0% effective October 4, 2020; now, therefore,

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

Section 1. That the sum of \$2,729,245 is hereby transferred from the unappropriated surplus of General Fund 050 to the unappropriated surplus of Working Capital Reserve Fund 754 for the purpose of increasing the City's working capital reserve.

Section 2. That the sum of \$2,811,948 is hereby transferred from the unappropriated surplus of General Fund 050 to the balance sheet reserve account no. 050x2585, "Economic Downturn Reserve," for the purpose of increasing the City's emergency reserve to 5.0% of FY 2020 General Fund Revenues.

Section 3. That the sum of \$5,676,785 is hereby transferred from the unappropriated surplus of General Fund 050 to the balance sheet reserve account no. 050x2580, "Reserve for Weather Events, Other Emergency and One-Time Needs," for the purpose of providing resources for unanticipated emergencies including those caused by unusual weather events, in order to increase the City's reserve for this purpose to 2.0% of FY 2020 General Fund revenues.

Section 4. That the sum of \$700,000 is hereby appropriated from the unappropriated surplus of General Fund 050 to the Cincinnati Police Department's General Fund personnel operating budget account no. 050x222x7100 for the purpose of providing funding for police visibility overtime as part of the City's Violence Reduction Initiatives.

Section 5. That the sum of \$100,000 is hereby appropriated from the unappropriated surplus of General Fund 050 to the Law Department's General Fund personnel operating budget account no. 050x111x7100 for the purpose of providing funding for an additional prosecuting attorney as part of the City's Violence Reduction Initiatives.

Section 6. That the sum of \$200,000 is hereby appropriated from the unappropriated surplus of General Fund 050 to the City Manager's Office's General Fund non-personnel operating

budget account no. 050x101x7200 for the purpose of providing funding for a Safety Coordinators/Organizers Program as part of the City's Violence Reduction Initiatives.

Section 7. That the sum of \$330,000 is hereby appropriated from the unappropriated surplus of General Fund 050 to the Cincinnati Police Department's General Fund non-personnel operating budget account no. 050x222x7400 for the purpose of providing funding for tuition reimbursement expenses for sworn officers.

Section 8. That the sum of \$100,000 is hereby appropriated from the unappropriated surplus of General Fund 050 to the Tuition Reimbursement General Fund Non-Departmental non-personnel operating budget account no. 050x928x7400 for the purpose of providing funding for tuition reimbursement expenses for General Fund employees.

Section 9. That the sum of \$100,000 is hereby appropriated from the unappropriated surplus of General Fund 050 to the Law Department's non-personnel account no. 050x111x7200 for the purpose of providing funding for costs associated with the creation of the Housing Court.

Section 10. That the sum of \$40,000 is hereby appropriated from the unappropriated surplus of General Fund 050 to the Department of Finance's General Fund non-personnel operating budget account no. 050x131x7200 for the purpose of providing funding for contractual services related to increasing compliance with the City's Short-Term Rental Excise Tax.

Section 11. That the sum of \$339,245 is hereby transferred from the unappropriated surplus of General Fund 050 to the unappropriated surplus of Cincinnati Health District Fund 416.

Section 12. That the sum of \$339,245 is hereby appropriated from the unappropriated surplus of Cincinnati Health District Fund 416 to the Cincinnati Health Department's Cincinnati Health District Fund non-personnel operating budget account no. 416x263x7200 for the purpose

of providing funding for COVID-19 related expenses which include the cost of contact tracers and testing.

Section 13. That the sum of \$95,000 is hereby appropriated from the unappropriated surplus of General Fund 050 to the Department of Recreation's General Fund non-personnel operating budget account no. 050x199x7200, for the purpose of providing funding to upgrade WIFI access at Recreation Centers to allow students to attend school virtually.

Section 14. That the sum of \$50,000 is hereby appropriated from the unappropriated surplus of General Fund 050 to the City Manager's Office's General Fund non-personnel operating budget account no. 050x101x7200 for the purpose of replacing CitiCable's Video Playback System.

Section 15. That all existing sections of Chapter 307 of the Cincinnati Municipal Code regarding the compensation schedules of employees in Divisions 0, 5, 7 (LAW), 8, and 9 are hereby repealed.

Section 16. That in place of the sections of Chapter 307 of the Cincinnati Municipal Code repealed in Section 15 hereof, new compensation schedules are hereby ordained for employees in Divisions 0, 5, 7 (LAW), 8, and 9, as indicated on the Non-Represented Salary Schedule attached hereto as Exhibit A, and by this reference made a part hereof. The new compensation schedules for each classification in Divisions 0, 5, 7 (LAW), 8, and 9 have been determined by increasing current rates by 2.0%.

Section 17. That the sum of \$596,570 is hereby appropriated from the unappropriated surplus of General Fund 050 to various General Fund personnel operating budget accounts according to the attached Schedule of Transfer for the purpose of restoring merit pay for FY 2021

for non-represented employees and providing for a 2.0% cost-of-living adjustment (COLA) for non-represented employees effective October 4, 2020.

Section 18. That the sum of \$78,430 is hereby transferred from the unappropriated surplus of General Fund 050 to the unappropriated surplus of Cincinnati Health District Fund 416.

Section 19. That the sum of \$78,430 is hereby appropriated from the unappropriated surplus of Cincinnati Health District Fund 416 to the Cincinnati Health Department's Cincinnati Health District Fund personnel operating budget accounts according to the attached Schedule of Transfer for the purpose of restoring merit pay for FY 2021 for non-represented employees and providing for a 2.0% cost-of-living adjustment (COLA) for non-represented employees effective October 4, 2020.

Section 20. That the sum of \$278,050 is hereby appropriated from the unappropriated surplus of the various Restricted Funds to personnel operating budget accounts of the various Restricted Funds according to the attached Schedule of Transfer for the purpose of restoring merit pay for non-represented employees and providing for a 2.0% cost-of-living-adjustment (COLA) for non-represented employees effective October 4, 2020.

Section 21. That the appropriate City officers are hereby authorized to do all things necessary and proper to implement the provisions of Sections 1 through 20 herein.

Section 22. 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 accomplish the authorized transfers and appropriations so that the funding

described herein is in place immediately and so that the necessary expenditures described herein may be made as soon as possible.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

Exhibit A: Non-Represented Salary Schedule with 2.0% Cost-of-Living Adjustment (COLA)

CMC Section	Division	Grade	Title	Existing Minimum	Existing Maximum	New Minimum	New Maximum
				Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
307-001	D0	001	Administrative Specialist	24.339729	37.004064	24.826524	37.744145
307-008	D0	008	Administrative Technician	18.434735	28.026612	18.803430	28.587144
307-009	D0	009	Investigator	28.98452	43.897437	29.564210	44.775386
307-013	D0	013	Senior Administrative Spclst	28.873474	43.897437	29.450943	44.775386
307-042	D0	042	Computer Programmer/Analyst	19.156605	26.378648	19.539737	26.906221
307-043	D0	043	Senior Comptr Programmer/Anlys	28.873474	43.897437	29.450943	44.775386
307-058	D0	058	Community Dvlpmnt & Plan Anal-EXM	24.339729	37.004064	24.826524	37.744145
307-066	D0	066	Development Officer	24.339729	33.515798	24.826524	34.186114
307-080	D0	080	Graphic Designer	24.339729	37.004064	24.826524	37.744145
307-089	D0	089	Human Resources Analyst	24.339729	37.004064	24.826524	37.744145
307-092	D0	092	Internal Auditor	24.339729	37.004064	24.826524	37.744145
307-094	D0	094	Management Analyst	24.339729	37.004064	24.826524	37.744145
307-146	D0	146	Comm Econ Development Analyst	19.093719	37.004064	19.475593	37.744145
307-148	D0	148	Comm Econ Develop Sr Analyst	23.629433	43.897437	24.102022	44.775386
307-149	D0	149	Senior Human Resources Analyst	28.873899	43.897437	29.451377	44.775386
307-150	D0	150	Senior Internal Auditor	28.873899	43.897437	29.451377	44.775386
307-151	D0	151	Supvr of Prk/Rec Maint & Const	28.873899	43.897437	29.451377	44.775386
307-152	D0	152	Senior City Planner	28.873899	43.897437	29.451377	44.775386
307-154	D0	154	Senior CommDev & Plan Anl-EXM	28.873899	43.897437	29.451377	44.775386
307-156	D0	156	Senior Development Officer	28.873899	43.897437	29.451377	44.775386
307-177	D0	177	Senior Management Analyst	28.873899	43.897437	29.451377	44.775386
307-190	D0	190	Zoning Hearing Examiner	42.84844	57.8454	43.705409	59.002308
307-200	D0	200	Dietitian	21.67947	29.852629	22.113059	30.449682
307-219	D0	219	PEAP Coordinator	29.252272	43.897437	29.837317	44.775386
307-220	D0	220	Psychologist	29.252272	40.280381	29.837317	41.085989
307-228	D0	228	Assistant Dental Director	28.873899	39.759353	29.451377	40.554540
307-248	D0	248	Physician Assistant	30.562959	41.074051	31.174218	41.895532
307-258	D0	258	Accountant	24.339729	37.004064	24.826524	37.744145
307-265	D0	265	City Planner	24.339729	37.004064	24.826524	37.744145
307-271	D0	271	Physical Therapist	22.81882	31.42152	23.275196	32.049950
307-299	D0	299	Asst Health Laboratory Mgr	28.873899	39.759353	29.451377	40.554540
307-323	D0	323	Training Coordinator	28.873899	43.897437	29.451377	44.775386
307-438	D0	438	Supervisor of Building Permits	23.959235	32.991864	24.438420	33.651701
307-443	D0	443	Zoning Supervisor	27.362501	37.678166	27.909751	38.431729
307-575	D0	575	Development Officer 4	31.137815	43.897437	31.760571	44.775386
307-763	D0	763	Security Supervisor	18.434735	25.384631	18.803430	25.892324
307-824	D0	824	Information Technology Coor	19.156605	26.378648	19.539737	26.906221
307-826	D0	826	Emergency Comm Asst Mgr	28.873473	43.897437	29.450942	44.775386
307-864	D0	864	Landscape Architect	24.719157	34.038279	25.213540	34.719045
307-963	D0	963	Park Planner	31.137815	42.876764	31.760571	43.734299
307-004	D5	004	ETS Director	52.28534	78.85433	53.331047	80.431417
307-012	D5	012	Director of Communications	43.589907	62.040231	44.461705	63.281036
307-014	D5	014	Executive Mgr of Police Relatns	43.311199	58.470241	44.177423	59.639646
307-016	D5	016	Assistant to the City Manger	40.17095	58.132183	40.974369	59.294827
307-019	D5	019	Assistant Safety Director	43.31121	58.47013	44.177434	59.639533
307-020	D5	020	City Manager	119.0166	151.282614	121.396932	154.308266
307-022	D5	022	CommDev & Planning Director	52.28534	70.585213	53.331047	71.996917
307-032	D5	032	Deputy City Manager	61.090774	82.472546	62.312589	84.121997
307-033	D5	033	Environmental Programs Manager	45.611021	62.040231	46.523241	63.281036
307-040	D5	040	Budget Director	52.285342	72.702747	53.331049	74.156802
307-059	D5	059	Dir of Perform & Data Analytic	52.28534	78.85433	53.331047	80.431417
307-074	D5	074	CCA Director	52.28534	72.702747	53.331047	74.156802
307-075	D5	075	Cntrct Cmp & Adm Hrng Off	40.17095	54.230777	40.974369	55.315393
307-108	D5	108	Assistant Finance Director	48.009405	66.436782	48.969593	67.765518
307-114	D5	114	Director of Economic Inclusion	57.77801	72.702747	58.933570	74.156802
307-115	D5	115	Finance Director	52.28534	78.85433	53.331047	80.431417
307-120	D5	120	Retirement Director	52.28534	72.702747	53.331047	74.156802
307-153	D5	153	Dep Dir Perf & Data Analytics	45.159345	61.42597	46.062532	62.654489
307-155	D5	155	Human Resources Director	52.28534	72.702747	53.331047	74.156802

Exhibit A: Non-Represented Salary Schedule with 2.0% Cost-of-Living Adjustment (COLA)

CMC Section	Division	Grade	Title	Existing Minimum	Existing Maximum	New Minimum	New Maximum
				Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
307-158	D5	158	Asst Human Resources Director	43.31121	58.47013	44.177434	59.639533
307-170	D5	170	City Solicitor	61.090774	94.464881	62.312589	96.354179
307-204	D5	204	Assistant Health Commissioner	45.611021	61.574874	46.523241	62.806371
307-205	D5	205	Health Commissioner	61.09086	94.464881	62.312677	96.354179
307-365	D5	365	Fire Chief	61.090776	83.36522	62.312592	85.032524
307-389	D5	389	Police Chief	61.090776	83.36522	62.312592	85.032524
307-446	D5	446	Buildings & Inspections Dir	62.701761	78.85433	63.955796	80.431417
307-450	D5	450	Asst Building & Insp Director	37.713618	50.913385	38.467890	51.931653
307-490	D5	490	City Planning Director	52.28534	72.702747	53.331047	74.156802
307-525	D5	525	Deputy Public Works Director	45.611021	66.436782	46.523241	67.765518
307-527	D5	527	Deputy Sewers Director	45.611021	61.574873	46.523241	62.806370
307-530	D5	530	Sewers Director	52.28534	78.85433	53.331047	80.431417
307-534	D5	534	Dep Dir of Economic Inclusion	45.610938	62.040231	46.523157	63.281036
307-535	D5	535	Deputy Director	45.610836	66.436782	46.523053	67.765518
307-554	D5	554	Asst Neighborhood Svcs Directr	37.713618	50.913385	38.467890	51.931653
307-556	D5	556	Deputy CommDev & Planning Dir	45.611021	61.574875	46.523241	62.806373
307-559	D5	559	Assistant Recreation Director	42.051036	62.040231	42.892057	63.281036
307-560	D5	560	Recreation Director	52.28534	78.85433	53.331047	80.431417
307-735	D5	735	Water Works Director	63.642287	78.85433	64.915133	80.431417
307-828	D5	828	Emergency Comm Center Director	52.285341	78.854332	53.331048	80.431419
307-865	D5	865	Parks Director	55.81599	78.85433	56.932310	80.431417
307-888	D5	888	Public Services Director	52.28534	78.85433	53.331047	80.431417
307-891	D5	891	Assistant City Manager	61.090775	94.464881	62.312591	96.354179
307-970	D5	970	Transportation & Eng Director	52.28534	78.85433	53.331047	80.431417
307-981	D5	981	Employment & Training Manager	45.611021	61.574873	46.523241	62.806370
307-982	D5	982	Director of Water and Sewers	66.397175	99.838837	67.725119	101.835614
307-984	D5	984	Director of Trade & Development	57.77801	72.702747	58.933570	74.156802
307-985	D5	985	Deputy Dir of Trade & Developm	45.611021	66.436718	46.523241	67.765452
307-989	D5	989	Deputy Director Water & Sewers	49.986935	66.436782	50.986674	67.765518
307-991	D5	991	Executive Project Director	53.967482	96.504204	55.046832	98.434288
307-997	D5	997	Economic Development Director	52.28534	70.585213	53.331047	71.996917
307-157	LAW	157	Chief Counsel	42.28584	75.71839	43.131557	77.232758
307-166	LAW	166	Assistant City Solicitor	24.33973	43.965516	24.826525	44.844826
307-167	LAW	167	Senior Asst City Solicitor	28.6875	68.653846	29.261250	70.026923
307-169	LAW	169	Deputy City Solicitor	52.795079	83.045977	53.850981	84.706897
307-186	LAW	186	Support Services Manager	28.873472	39.75935	29.450941	40.554537
307-187	LAW	187	Law Chief of Staff	52.795079	83.045977	53.850981	84.706897
307-188	LAW	188	Real Estate Manager	39.22216	58.132183	40.006603	59.294827
307-191	LAW	191	Asst to the City Solicitor	28.307326	43.965516	28.873473	44.844826
307-193	LAW	193	Support Services Specialist	18.073267	37.004066	18.434732	37.744147
307-217	LAW	217	Legal Assistant	18.073267	37.004066	18.434732	37.744147
307-223	LAW	223	Chief Appraiser	34.601325	50.316092	35.293352	51.322414
307-224	LAW	224	Real Estate Specialist	24.33973	33.515795	24.826525	34.186111
307-225	LAW	225	Senior Real Estate Specialist	31.137816	43.965516	31.760572	44.844826
307-930	LAW	930	Law Clerk	11.038727	18.466475	11.259502	18.835805
307-931	LAW	931	Administrative Hearing Officer	29.318182	68.653846	29.904546	70.026923
307-998	LAW	998	Spvg Real Estate Specialist	34.601324	46.711782	35.293350	47.646018
307-015	D8	015	Regional Computer Center Mgr	52.795077	71.273359	53.850979	72.698826
307-041	D8	041	Supervising Management Analyst	34.601323	50.316092	35.293349	51.322414
307-045	D8	045	Info Technology Asst Manager	37.077678	54.224138	37.819232	55.308621
307-046	D8	046	Information Technology Manager	41.888761	58.132183	42.726536	59.294827
307-078	D8	078	Chief Investigator	34.601323	50.316092	35.293349	51.322414
307-109	D8	109	Airport Manager	37.077678	54.224138	37.819232	55.308621
307-110	D8	110	Division Manager	41.888393	58.132183	42.726161	59.294827
307-113	D8	113	Risk Manager	37.077678	50.054868	37.819232	51.055965
307-131	D8	131	Supvg Environ/Safety Spec	34.601323	50.316092	35.293349	51.322414
307-134	D8	134	Asst Commercial Svcs Supt	32.745383	44.206266	33.400291	45.090391
307-135	D8	135	Commercial Services Supt	41.888761	58.132183	42.726536	59.294827
307-141	D8	141	Supervising Buyer	34.601323	50.316092	35.293349	51.322414

Exhibit A: Non-Represented Salary Schedule with 2.0% Cost-of-Living Adjustment (COLA)

CMC Section	Division	Grade	Title	Existing Minimum	Existing Maximum	New Minimum	New Maximum
				Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
307-145	D8	145	City Purchasing Agent	37.077678	50.054868	37.819232	51.055965
307-159	D8	159	Supvg Human Resources Analyst	34.601323	50.316092	35.293349	51.322414
307-160	D8	160	Police Academy Manager	39.221963	52.949919	40.006402	54.008917
307-168	D8	168	Asst Treatment Superintendent	37.077678	54.224138	37.819232	55.308621
307-178	D8	178	Medical Director	73.174139	103.467051	74.637622	105.536392
307-185	D8	185	Supvg Comm Dev & Plang Anl-EXM	34.601323	50.316092	35.293349	51.322414
307-201	D8	201	Occupational/Safety Hlth Coord	41.777787	58.132183	42.613343	59.294827
307-202	D8	202	Public Wks Opr Asst Supt	37.077678	50.054868	37.819232	51.055965
307-208	D8	208	City Architect	42.848441	62.040231	43.705410	63.281036
307-216	D8	216	Principal Engineer	39.392324	54.224138	40.180170	55.308621
307-218	D8	218	Envrnmntl/Solid Wst Prgms Crd	39.222163	54.224138	40.006606	55.308621
307-227	D8	227	Dental Director	81.494078	97.701149	83.123960	99.655172
307-231	D8	231	Parks/Rec Superintendent	40.669085	58.132183	41.482467	59.294827
307-233	D8	233	Pharmacy Director	55.828365	66.883485	56.944932	68.221155
307-236	D8	236	Supervising Real Property Spec	34.601323	50.316092	35.293349	51.322414
307-237	D8	237	Public Information Officer	30.836381	47.799111	31.453109	48.755093
307-242	D8	242	Health Programs Manager	34.601323	50.316092	35.293349	51.322414
307-249	D8	249	Public Health Practitioner	65.381899	88.265564	66.689537	90.030875
307-252	D8	252	Dentist	67.847163	86.954022	69.204106	88.693102
307-253	D8	253	Public Wks Opr Superintendent	41.888761	58.132183	42.726536	59.294827
307-254	D8	254	Supervising Accountant	34.601323	50.316092	35.293349	51.322414
307-255	D8	255	Supervising Architect	34.601323	50.316092	35.293349	51.322414
307-256	D8	256	Treatment Superintendent	41.888761	58.132183	42.726536	59.294827
307-257	D8	257	Public Wrks/Utilities Supt	41.888761	58.132183	42.726536	59.294827
307-259	D8	259	Environmental Services Directr	32.745383	46.896551	33.400291	47.834482
307-260	D8	260	Regional Comp Ctr Asst Mgr	45.043656	60.808933	45.944529	62.025112
307-261	D8	261	Public Health Internist	65.381899	88.265564	66.689537	90.030875
307-262	D8	262	Public Health Pediatrician	65.381899	88.265564	66.689537	90.030875
307-263	D8	263	Public Health Physician	65.381899	88.265564	66.689537	90.030875
307-282	D8	282	Nursing Director	41.888761	58.132183	42.726536	59.294827
307-286	D8	286	Supervising Chemist	34.601323	50.316092	35.293349	51.322414
307-300	D8	300	Health Laboratory Director	32.745383	44.206266	33.400291	45.090391
307-304	D8	304	Treatment Supervisor	34.601323	50.316092	35.293349	51.322414
307-307	D8	307	Supervising Epidemiologist	34.734406	50.316092	35.429094	51.322414
307-308	D8	308	Pension Fund Manager	50.121925	67.664886	51.124364	69.018184
307-321	D8	321	Finance Manager	45.043656	62.040231	45.944529	63.281036
307-435	D8	435	Supervising Inspector	34.106137	46.896551	34.788260	47.834482
307-486	D8	486	Supervising City Planner	34.601323	50.316092	35.293349	51.322414
307-487	D8	487	Urban Conservator	34.601323	50.316092	35.293349	51.322414
307-509	D8	509	Geotechnical Engineer	34.601323	50.316092	35.293349	51.322414
307-515	D8	515	Supervising Engineer	34.601323	50.316092	35.293349	51.322414
307-518	D8	518	Principal Architect	39.392324	54.224138	40.180170	55.308621
307-519	D8	519	City Engineer	46.723098	62.040231	47.657560	63.281036
307-529	D8	529	Supvg Bldg Plans Exam Code Anl	34.601323	50.316092	35.293349	51.322414
307-531	D8	531	City Traffic Engineer	42.848441	62.040231	43.705410	63.281036
307-539	D8	539	Water Works Chief Engineer	42.848441	58.132183	43.705410	59.294827
307-540	D8	540	Facilities Maintenance Manager	37.077678	50.054868	37.819232	51.055965
307-541	D8	541	Asst Facilities Mntnce Manager	32.745383	46.896551	33.400291	47.834482
307-542	D8	542	Facilities Manager	41.888761	58.132183	42.726536	59.294827
307-544	D8	544	Sewers Chief Engineer	42.848441	58.132183	43.705410	59.294827
307-551	D8	551	Supvg Parks/Recreation Cordntr	34.601323	50.316092	35.293349	51.322414
307-558	D8	558	Supervisor of Golf	34.601323	50.316092	35.293349	51.322414
307-576	D8	576	Development Manager	34.601323	50.316092	35.293349	51.322414
307-646	D8	646	Traffic Services Manager	34.601323	46.711785	35.293349	47.646021
307-683	D8	683	City Stormwater Management Eng	42.848441	58.132183	43.705410	59.294827
307-685	D8	685	Asst Fleet Services Manager	32.745383	46.896551	33.400291	47.834482
307-686	D8	686	Fleet Services Manager	39.222163	52.949919	40.006606	54.008917
307-692	D8	692	Parking Superintendent	39.222163	54.224138	40.006606	55.308621
307-710	D8	710	Wastewater Collection Supt	41.888761	56.549827	42.726536	57.680824

Exhibit A: Non-Represented Salary Schedule with 2.0% Cost-of-Living Adjustment (COLA)

CMC Section	Division	Grade	Title	Existing Minimum	Existing Maximum	New Minimum	New Maximum
				Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
307-729	D8	729	Industrial Waste Superintendnt	41.888761	56.549827	42.726536	57.680824
307-764	D8	764	Asst Water Distribution Supt	32.745383	44.206266	33.400291	45.090391
307-765	D8	765	Water Distribution Supt	41.888761	56.549827	42.726536	57.680824
307-822	D8	822	Emergency Response Coordinator	34.601323	46.711785	35.293349	47.646021
307-827	D8	827	Emergency Communications Mgr	40.006399	54.008917	40.806527	55.089095
307-880	D8	880	Printing Services & Stores Mgr	32.745383	46.896551	33.400291	47.834482
307-948	D8	948	Asst Convention Center Manager	32.745383	44.206266	33.400291	45.090391
307-950	D8	950	Convention Center Manager	39.222163	52.949919	40.006606	54.008917
307-983	D8	983	Employment & Training Supv.	34.601323	50.316092	35.293349	51.322414
307-986	D8	986	Optometrist	58.039411	74.622012	59.200199	76.114452
307-999	D8	999	Internal Audit Manager	37.077679	54.224138	37.819233	55.308621
307-023	D9	023	Council Assistant	11.038727	53.84397	11.259502	54.920849
307-024	D9	024	Chief Deputy Clerk of Council	31.200644	46.701119	31.824657	47.635141
307-025	D9	025	Clerk of Council	39.87153	52.853814	40.668961	53.910890
307-035	D9	035	Deputy Clerk	16.39415	28.422457	16.722033	28.990906
307-036	D9	036	Assistant Chief Deputy Clerk	24.875478	34.390564	25.372988	35.078375

SCHEDULE OF TRANSFER

FY 2020 CLOSEOUT GENERAL FUND SCHEDULE OF APPROPRIATIONS

Fund 050 General Fund

REDUCTIONS				INCREASES				
Fund	Agency	Appropriation Unit	\$ Amount	Fund	Agency	Appropriation Unit	\$ Amount	
SUPPLEMENTAL APPROPRIATIONS				SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS				USE ACCOUNTS				
UNAPPROPRIATED SURPLUS				OFFICE OF THE MAYOR				
GENERAL FUND	050		596,570	OFFICE OF THE MAYOR	050	031	7100	12,210
				Total				12,210
				CLERK OF COUNCIL				
				OFFICE OF THE CLERK OF COUNCIL	050	041	7100	10,360
				Total				10,360
				ENTERPRISE TECHNOLOGY SOLUTIONS				
				ENTERPRISE TECHNOLOGY SOLUTIONS	050	091	7100	23,158
				Total				23,158
				CITY MANAGER'S OFFICE				
				CITY MANAGER'S OFFICE	050	101	7100	31,002
				OFFICE OF BUDGET AND EVALUATION	050	102	7100	20,932
				EMERGENCY COMMUNICATIONS CENTER	050	103	7100	9,963
				OFFICE OF ENVIRONMENT AND SUSTAINABILITY	050	104	7100	6,105
				OFFICE OF PERFORMANCE AND DATA ANALYTICS	050	108	7100	21,274
				INTERNAL AUDIT	050	109	7100	10,443
				Total				99,719
				DEPARTMENT OF LAW				
				LAW - CIVIL	050	111	7100	90,320
				LAW - ADMINISTRATIVE HEARINGS & PROSECUTION	050	112	7100	64,624
				Total				154,944
				DEPARTMENT OF HUMAN RESOURCES				
				HUMAN RESOURCES	050	121	7100	29,271
				Total				29,271
				DEPARTMENT OF FINANCE				
				OFFICE OF THE DIRECTOR	050	131	7100	4,803
				ACCOUNTS AND AUDITS	050	133	7100	11,710
				TREASURY	050	134	7100	1,941
				INCOME TAX	050	136	7100	8,670
				PURCHASING	050	137	7100	8,223
				Total				35,347
				DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT				
				DIRECTOR'S OFFICE AND ADMINISTRATION	050	161	7100	12,667
				HOUSING DIVISION	050	162	7100	1,620
				ECONOMIC DEVELOPMENT AND MAJOR/SPECIAL PROJECTS DIVISION	050	164	7100	23,240
				Total				37,527
				DEPARTMENT OF CITY PLANNING				
				CITY PLANNING	050	171	7100	15,258
				Total				15,258

FY 2020 CLOSEOUT GENERAL FUND SCHEDULE OF APPROPRIATIONS

REDUCTIONS		Fund	Agency	Appropriation Unit	\$ Amount	INCREASES		Fund	Agency	Appropriation Unit	\$ Amount				
						CITIZEN COMPLAINT AUTHORITY									
						CITIZEN COMPLAINT AUTHORITY						050	181	7100	9,689
						Total						9,689			
						DEPARTMENT OF RECREATION									
						WEST REGION						050	191	7100	3,118
						MAINTENANCE						050	194	7100	5,139
						SUPPORT SERVICES						050	199	7100	20,515
						Total						28,772			
						CINCINNATI PARKS DEPARTMENT									
						OFFICE OF THE DIRECTOR						050	201	7100	6,127
						OPERATIONS AND FACILITY MANAGEMENT						050	202	7100	4,993
						ADMINISTRATION AND PROGRAM SERVICES						050	203	7100	19,967
						Total						31,087			
						DEPARTMENT OF BUILDINGS AND INSPECTIONS									
						BUILDINGS & INSPECTIONS, LICENSES & PERMITS						050	211	7100	27,395
						PROPERTY MAINTENANCE CODE ENFORCEMENT						050	212	7100	5,382
						Total						32,777			
						CINCINNATI POLICE DEPARTMENT									
						INVESTIGATIONS BUREAU						050	225	7100	1,795
						SUPPORT BUREAU						050	226	7100	3,765
						ADMINISTRATION BUREAU						050	227	7100	9,606
						Total						15,166			
						DEPARTMENT OF TRANSPORTATION AND ENGINEERING									
						OFFICE OF THE DIRECTOR						050	231	7100	14,247
						Total						14,247			
						DEPARTMENT OF PUBLIC SERVICES									
						OFFICE OF THE DIRECTOR						050	251	7100	15,565
						NEIGHBORHOOD OPERATIONS						050	253	7100	2,270
						Total						17,835			
						CINCINNATI FIRE DEPARTMENT									
						SUPPORT SERVICES						050	272	7100	11,200
						Total						11,200			
						DEPARTMENT OF ECONOMIC INCLUSION									
						ECONOMIC INCLUSION						050	281	7100	18,003
						Total						18,003			
TOTAL FUND REDUCTIONS					596,570	TOTAL FUND INCREASES					596,570				

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 101 Water Works

<i>REDUCTIONS</i>				<i>INCREASES</i>			
	Fund	Agency	Appropriation Unit \$ Amount		Fund	Agency	Appropriation Unit \$ Amount
SUPPLEMENTAL APPROPRIATIONS				SUPPLEMENTAL APPROPRIATIONS			
SOURCE ACCOUNTS				USE ACCOUNTS			
UNAPPROPRIATED SURPLUS		101	111,646	DEPARTMENT OF WATER WORKS			
				DEPARTMENTAL SUPPORT SERVICES	101	301	7100 58,203
				COMMERCIAL SERVICES	101	302	7100 13,251
				DIVISION OF SUPPLY	101	303	7100 12,590
				DIVISION OF DISTRIBUTION	101	304	7100 1,628
				WATER QUALITY DIVISION	101	305	7100 9,062
				ENGINEERING	101	306	7100 9,679
				INFORMATION TECHNOLOGY	101	307	7100 7,233
Subtotal Supplemental Appropriations			111,646	Subtotal Supplemental Appropriations			111,646
TOTAL FUND REDUCTIONS			111,646	TOTAL FUND INCREASES			111,646

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 102 Parking System Facilities

<i>REDUCTIONS</i>				<i>INCREASES</i>			
	Fund	Agency	Appropriation Unit \$ Amount		Fund	Agency	Appropriation Unit \$ Amount
SUPPLEMENTAL APPROPRIATIONS				SUPPLEMENTAL APPROPRIATIONS			
SOURCE ACCOUNTS				USE ACCOUNTS			
UNAPPROPRIATED SURPLUS		102	1,954	DIVISION OF PARKING FACILITIES			
				DIVISION OF PARKING SYSTEM FACILITIES	102	248	7100
Subtotal Supplemental Appropriations			1,954	Subtotal Supplemental Appropriations			1,954
TOTAL FUND REDUCTIONS			1,954	TOTAL FUND INCREASES			1,954

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 104 General Aviation

<i>REDUCTIONS</i>				<i>INCREASES</i>			
Fund	Agency	Appropriation Unit	\$ Amount	Fund	Agency	Appropriation Unit	\$ Amount
SUPPLEMENTAL APPROPRIATIONS				SUPPLEMENTAL APPROPRIATIONS			
SOURCE ACCOUNTS				USE ACCOUNTS			
UNAPPROPRIATED SURPLUS	104		3,664	DEPARTMENT OF TRANSPORTATION & ENGINEERING			
				GENERAL AVIATION	104	234	7100
							3,664
				Subtotal Supplemental Appropriations			3,664
			3,664				
TOTAL FUND REDUCTIONS			3,664	TOTAL FUND INCREASES			3,664

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 107 Stormwater Management

REDUCTIONS				INCREASES					
	Fund	Agency	Appropriation Unit	\$ Amount		Fund	Agency	Appropriation Unit	\$ Amount
SUPPLEMENTAL APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS					USE ACCOUNTS				
UNAPPROPRIATED SURPLUS		107		6,261	STORMWATER MANAGEMENT UTILITY				
					STORMWATER MANAGEMENT UTILITY	107	311	7100	6,261
Subtotal Supplemental Appropriations				6,261	Subtotal Supplemental Appropriations				6,261
TOTAL FUND REDUCTIONS				6,261	TOTAL FUND INCREASES				6,261

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 151 Bond Retirement

<i>REDUCTIONS</i>				<i>INCREASES</i>			
	Fund	Agency	Appropriation Unit \$ Amount		Fund	Agency	Appropriation Unit \$ Amount
SUPPLEMENTAL APPROPRIATIONS				SUPPLEMENTAL APPROPRIATIONS			
SOURCE ACCOUNTS				USE ACCOUNTS			
UNAPPROPRIATED SURPLUS	151		2,936	DEPARTMENT OF FINANCE	151	134	7100 2,936
				TREASURY			
Subtotal Supplemental Appropriations			2,936	Subtotal Supplemental Appropriations			2,936
TOTAL FUND REDUCTIONS			2,936	TOTAL FUND INCREASES			2,936

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 301 Street Construction, Maintenance and Repair

<i>REDUCTIONS</i>					<i>INCREASES</i>				
	Fund	Agency	Appropriation Unit	\$ Amount		Fund	Agency	Appropriation Unit	\$ Amount
SUPPLEMENTAL APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS					USE ACCOUNTS				
UNAPPROPRIATED SURPLUS		301		4,821	DEPARTMENT OF PUBLIC SERVICES				
					TRANSPORTATION AND ROAD OPERATIONS	301	252	7100	4,821
Subtotal Supplemental Appropriations				4,821	Subtotal Supplemental Appropriations				4,821
TOTAL FUND REDUCTIONS				4,821	TOTAL FUND INCREASES				4,821

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 302 Income Tax-Infrastructure

<i>REDUCTIONS</i>				<i>INCREASES</i>			
	Fund	Agency	Appropriation Unit \$ Amount		Fund	Agency	Appropriation Unit \$ Amount
SUPPLEMENTAL APPROPRIATIONS				SUPPLEMENTAL APPROPRIATIONS			
SOURCE ACCOUNTS				USE ACCOUNTS			
UNAPPROPRIATED SURPLUS	302		62,466	DEPARTMENT OF LAW			
				LAW - CIVIL	302	111	7100 6,663
				DEPARTMENT OF HUMAN RESOURCES			
				HUMAN RESOURCES	302	121	7100 4,542
				DEPARTMENT OF TRANSPORTATION AND ENGINEERING			
				DIRECTOR'S OFFICE	302	231	7100 2,645
				TRANSPORTATION PLANNING AND URBAN DESIGN	302	232	7100 7,112
				ENGINEERING	302	233	7100 19,775
				TRAFFIC SERVICES	302	238	7100 5,449
				TRAFFIC ENGINEERING	302	239	7100 9,111
				DEPARTMENT OF PUBLIC SERVICES			
				CITY FACILITY MANAGEMENT	302	255	7100 7,169
Subtotal Supplemental Appropriations			62,466	Subtotal Supplemental Appropriations			62,466
TOTAL FUND REDUCTIONS			62,466	TOTAL FUND INCREASES			62,466

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 395 Community Health Center Activities

<i>REDUCTIONS</i>					<i>INCREASES</i>				
	Fund	Agency	Appropriation Unit	\$ Amount		Fund	Agency	Appropriation Unit	\$ Amount
SUPPLEMENTAL APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS					USE ACCOUNTS				
UNAPPROPRIATED SURPLUS	395			54,995	CINCINNATI HEALTH DEPARTMENT				
					PRIMARY HEALTH CARE - PROGRAMS	395	264	7100	3,378
					PRIMARY HEALTH CARE - CENTERS	395	265	7100	20,571
					SCHOOL AND ADOLESCENT HEALTH	395	266	7100	31,046
Subtotal Supplemental Appropriations				54,995	Subtotal Supplemental Appropriations				54,995
TOTAL FUND REDUCTIONS				54,995	TOTAL FUND INCREASES				54,995

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 416 Cincinnati Health District Fund

<i>REDUCTIONS</i>					<i>INCREASES</i>				
	Fund	Agency	Appropriation Unit	\$ Amount		Fund	Agency	Appropriation Unit	\$ Amount
SUPPLEMENTAL APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS					USE ACCOUNTS				
UNAPPROPRIATED SURPLUS	416			78,430	CINCINNATI HEALTH DEPARTMENT				
					OFFICE OF THE COMMISSIONER	416	261	7100	21,998
					TECHNICAL RESOURCES	416	262	7100	4,741
					COMMUNITY HEALTH SERVICES	416	263	7100	4,403
					PRIMARY HEALTH CARE - PROGRAMS	416	264	7100	4,325
					PRIMARY HEALTH CARE - CENTERS	416	265	7100	42,963
Subtotal Supplemental Appropriations				78,430	Subtotal Supplemental Appropriations				78,430
TOTAL FUND REDUCTIONS				78,430	TOTAL FUND INCREASES				78,430

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 449 Cincinnati Area Geographic Information System (CAGIS)

<i>REDUCTIONS</i>				<i>INCREASES</i>			
	Fund	Agency	Appropriation Unit \$ Amount		Fund	Agency	Appropriation Unit \$ Amount
SUPPLEMENTAL APPROPRIATIONS				SUPPLEMENTAL APPROPRIATIONS			
SOURCE ACCOUNTS				USE ACCOUNTS			
UNAPPROPRIATED SURPLUS		449	13,180	ENTERPRISE TECHNOLOGY SOLUTIONS			
				CINCINNATI AREA GEOGRAPHIC INFORMATION SYSTEM (CAGIS)	449	92	7100
Subtotal Supplemental Appropriations			13,180	Subtotal Supplemental Appropriations			13,180
TOTAL FUND REDUCTIONS			13,180	TOTAL FUND INCREASES			13,180

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 455 Streetcar Operations

<i>REDUCTIONS</i>					<i>INCREASES</i>				
	Fund	Agency	Appropriation Unit	\$ Amount		Fund	Agency	Appropriation Unit	\$ Amount
SUPPLEMENTAL APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS					USE ACCOUNTS				
UNAPPROPRIATED SURPLUS	455			6,467	DEPARTMENT OF LAW				
					LAW - CIVIL	455	111	7100	1,736
					DEPARTMENT OF TRANSPORTATION AND ENGINEERING				
					STREETCAR OPERATIONS	455	236	7100	4,731
Subtotal Supplemental Appropriations				6,467	Subtotal Supplemental Appropriations				6,467
TOTAL FUND REDUCTIONS				6,467	TOTAL FUND INCREASES				6,467

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 457 County Law Enforcement Applied Regionally (CLEAR)

<i>REDUCTIONS</i>				<i>INCREASES</i>			
	Fund	Agency	Appropriation Unit \$ Amount		Fund	Agency	Appropriation Unit \$ Amount
SUPPLEMENTAL APPROPRIATIONS				SUPPLEMENTAL APPROPRIATIONS			
SOURCE ACCOUNTS				USE ACCOUNTS			
UNAPPROPRIATED SURPLUS		457	7,260	ENTERPRISE TECHNOLOGY SOLUTIONS			
				COUNTY LAW ENFORCEMENT APPLIED REGIONALLY (CLEAR)	457	092	7100
Subtotal Supplemental Appropriations			7,260	Subtotal Supplemental Appropriations			7,260
TOTAL FUND REDUCTIONS				TOTAL FUND INCREASES			

FY 2020 CLOSEOUT RESTRICTED FUNDS SCHEDULE OF APPROPRIATIONS

Fund 759 Income Tax-Transit

<i>REDUCTIONS</i>				<i>INCREASES</i>					
	Fund	Agency	Appropriation Unit	\$ Amount		Fund	Agency	Appropriation Unit	\$ Amount
SUPPLEMENTAL APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS					USE ACCOUNTS				
UNAPPROPRIATED SURPLUS		759		2,400	DEPARTMENT OF LAW				
					LAW - CIVIL	759	111	7100	2,400
Subtotal Supplemental Appropriations				2,400	Subtotal Supplemental Appropriations				2,400
TOTAL FUND REDUCTIONS				2,400	TOTAL FUND INCREASES				2,400

FY 2020 CLOSEOUT TRANSFER SCHEDULE

<i>REDUCTIONS</i>					<i>INCREASES</i>				
	Fund	Agency	Appropriation Unit	\$ Amount		Fund	Agency	Appropriation Unit	\$ Amount
SOURCE ACCOUNTS					USE ACCOUNTS				
UNAPPROPRIATED SURPLUS					UNAPPROPRIATED SURPLUS				
GENERAL FUND	050			78,430	CINCINNATI HEALTH DISTRICT FUND	416			78,430
TOTAL FUND REDUCTIONS				78,430	TOTAL FUND INCREASES				78,430

September 23, 2020

202001600

To: Mayor and Members of City Council

From: Paula Boggs Muething, Interim City Manager

Subject: **COUNCIL REPORT – AVONDALE GROCERY STORE**

REFERENCE DOCUMENT #202001164

The Budget & Finance Committee at its session on August 4, 2020 referred the following item for review and report:

MOTION, submitted by Councilmembers Sittenfeld, Kearney, Young and Landsman, WE MOVE that the City of Cincinnati commit \$500,000 to help catalyze the Avondale grocery store project. WE FURTHER MOVE that these dollars come from the City Operating or Capital Budget within the next two Fiscal Year budget cycles. WE FURTHER MOVE that these City dollars be contingent on there being a Community Benefits Agreement between the grocery operator and the neighborhood and its longtime partners who have advocated passionately for this outcome, as represented by the Avondale Community Council, Avondale Community Development Corporation, The Center for Closing the Health Gap and The Urban League in order to ensure that ongoing quality standards for the neighborhood are met; and also be contingent on vetting and due diligence from the City's Department of Community and Economic Development; and finally, be contingent on a financial match against City dollars from other partners.

BACKGROUND

In 2016, the City provided assistance to The Community Builders (TCB) to construct a mixed income apartment community with first floor retail at the Avondale Town Center. This development included 119 apartment units and 75,000 square feet of commercial space with 20,000 square feet targeted for a grocery store. The development required significant subsidy including a \$2,000,000 capital grant, \$1,364,500 land sale price reduction, forgiveness of \$1,317,000 of debt outstanding on the Town Center and two CRA tax abatements for the residential units and commercial spaces. While a space was targeted for a grocery store, the effort to find an operator willing to invest the capital needed to start a store had not yet yielded an operator.

THE CURRENT PROPOSAL

The retail space targeted for the grocery is on the ground floor of the three-story mixed-use South Building, which is at the northwest quadrant of the intersection of Reading Road and Forest Avenue. The grocery will occupy approximately 7,000 square feet with 5,250 square feet as the sales floor. The space is adjacent to 10,000 square feet of office space for the future Center for Social Justice office and within the vicinity of other new retail and lifestyle businesses opening in the same building facing Reading Road.

The proposed grocery will operate 9:00 AM to 8:00 PM Monday through Saturday and 9:00 AM to 5:00 PM on Sunday. The store will feature an extremely space efficient interior layout that is dominant in meat, deli, produce aisles, alongside limited grocery sections with lower priced private label products. The proposed store will offer a 5% Senior Citizen Discount day and accept WIC and SNAP (Federal Food Stamps) immediately upon opening.

The grocery space will be leased and operated by Tennel and Chanel Bryant, current owners of The Country Meat Company with two retail divisions (service meat vendors) in farmers markets in Louisville, Kentucky and locally in Findlay Market. The owners also operate a food service division that provides hot and cold meals to schools, government agencies, childcare facilities, and catering events. An experienced urban, grocery manager will be hired to manage the day to day operations of the new Avondale grocery.

Upon completion, the Avondale Market will provide up to 4 FTE and 15 PTE employment positions in the overall Avondale community. The total annual payroll is approximately \$700,000.

MARKET STUDY ANALYSIS

The market analysis conducted by TCB outlines the neighborhood demographics of Avondale and categorizes it as a food desert, where the residents – who are predominantly black and low-income – do not have reasonable access to a grocery store, particularly one with fresh fruits and vegetables. Based on the market research analysis, the Avondale neighborhood is underserved with a population base of approximately 25,627 persons with an average income of \$36,528. Currently, there is not a market within a 1.4-mile radius of the Avondale Town Center. It is important to highlight that 40% of the households in the primary trade area of the Town Center do not own a vehicle. In addition, 16.5% of the households live below the poverty line.

A new grocery to anchor the Avondale Town Center will offer local residents access to lower cost, nutritious and fresh foods and strong perishables. This new store will help achieve the overall goal of providing and promoting better diets and healthier living standards in this relatively low-income and urban area.

The market study concluded that while a new conventional grocery has been difficult to attract to perceptions of cost to operate within the Avondale market, a smaller grocery model can lessen these risks through lower overhead and lower break-even costs to achieve profitability within the Avondale market.

CONDITIONS OF SUPPORT

TCB seeks the \$500,000 to facilitate the build-out of the grocery at the Avondale Town Center. TCB will be performing the build-out work for the tenant as part of the landlord scope of work.

DCED staff have analyzed information submitted by TCB including information about grocery operators and market information to confirm that the operator's proposal is aware of the complexities of the grocery market.

DCED staff has and will continue to evaluate the partnership between TCB and the tenant to properly execute the project. Our understanding is that the funding appropriated by the City will directly support the tenant improvements needed to build out the space for the grocery. In order to maintain the City's investment and intention in building a grocery store in the Avondale neighborhood the funds are expected to go directly to TCB who will manage the permanent improvements to the grocery space. For this reason, the Administration recommends providing the appropriated funds in the form of a forgivable loan to TCB which will directly support the development of the grocery store. Further, the Administration recommends the loan be contingent upon execution of a payment guaranty to be provided by the tenant and principals of the tenant, and the City will seek to secure its interests through a lien on the property or other available collateral, such as fixtures, furnishings, and equipment. Following successful operation of the Avondale Grocery for at minimum a five-year period, the City will agree to forgive the loan and release any collateral interests. All terms of the loan remain subject to further discussions between the City, tenant, and TCB.

City funding will be contingent upon secured commitments from the tenant and TCB. The requested assistance of the City represents 12% of the overall investment needed to bring the grocery and Center for Social Justice office to fruition. Below is a list of the investment commitments to date as provided by TCB.

Organization	Funding Amount
TCB Contribution / Other Sources	\$ 2,573,650.00
City of Cincinnati Capital Funding	\$ 500,000.00
Cincinnati Children's	\$ 600,000.00
Greater Cincinnati Foundation	\$ 150,000.00
Impact	\$ 75,000.00
Fifth Third	\$ 25,000.00
Haile/U.S. Bank Foundation	\$ 75,000.00
Other Community Resources	\$ 75,000.00
TOTAL PROJECT SOURCES	\$ 4,073,650.00

The Administration has identified \$491,000 of existing capital resources previously allocated by City Council under Ordinance 208-2017 for similar purposes. When the conditions listed above have been met, the Administration will propose reallocating these resources for the Avondale Grocery with other resources to appropriate sufficient funding for this project.

RECOMMENDATION

The Administration recommends approval of this report. Following approval of this report DCED will enter into negotiations with the tenant and TCB. The administration will bring the necessary agreements to City Council for approval.

Copy: Markiea L. Carter, Interim Director, Department of Community & Economic Development

City of Cincinnati



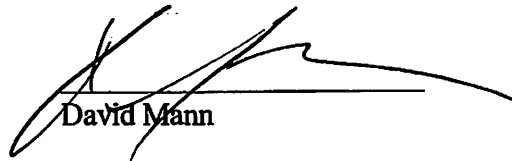
801 Plum Street, Suite 349
Cincinnati, Ohio 45202

Phone (513) 352-4610
Email david.mann@cincinnati-oh.gov
Web www.cincinnati-oh.gov

David S. Mann
Councilmember

MOTION

I move that West Eighth Street in Price Hill be returned to a safer place for neighborhood traffic, pedestrians and children by ending parking restrictions on the curbside lane during morning and evening commuting hours from Elberon to Nebraska.



David Mann

STATEMENT

In neighborhood after neighborhood we are learning that motorists driving **through a community** rather than **within a community** have a tendency to drive too fast and/or be distracted. This trip to get through a neighborhood becomes faster and less safe when parking is restricted during rush hours and an extra open lane becomes available to folks moving to and from suburbs. Pedestrian safety, particularly for children, is too important to suffer at the altar of fast commutes.

Similar changes have been made on Ludlow Avenue in Clifton and on Hamilton Avenue in Northside. Even commuters through these neighborhoods have welcomed a calmer driving experience.

City of Cincinnati



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David S. Mann
Councilmember

September 16, 2020

MOTION

WE MOVE that the City administration immediately work with the Homeless Coalition, Strategies to End Homelessness and other appropriate stakeholders to address the challenges of homeless citizens and folks on the verge of becoming homeless as Winter approaches in the midst of the pandemic.


Councilmember David Mann

Statement:

The COVID pandemic with its health issues, coupled with unemployment and eviction problems, has created an extraordinary challenge for people experiencing or about to experience homelessness. The Homeless Coalition, Strategies to Prevent Homelessness and other stakeholders are working diligently but need the active involvement of the City Administration with its expertise and financial support.

The starting points for his collaboration should be the Plan presented by the Homeless Coalition to the Budget and Finance Committee on September 14, 2020, and the ideas contained in Kevin Finn's attached Memorandum of September 3, 2020, to Mayor Cranley.

City of Cincinnati



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David S. Mann
Councilmember

The City has received a substantial grant of \$7.5 million in ESG-CV funds from the U.S. Department of Housing and Urban Development. Some \$4 million of this grant has not yet been allocated by the City. Suggestions from Strategies to End Homelessness and the Homeless Coalition lay out significant needs this winter.

The leadership and resources of the Administration are needed to make needed decisions long before winter demands set in.



Leading a coordinated community effort to **end homelessness** in Greater Cincinnati

MEMORANDUM

To: Mayor John Cranley, City of Cincinnati

From: Kevin Finn, President/CEO Strategies to End Homelessness
kfinn@end-homelessness.org, 513-708-8054

RE: Emergency Solutions Grant – CARES Act Funding

Date: September 3, 2020

Overview

Strategies to End Homelessness, the Unified Funding Agency of the Cincinnati/Hamilton County homeless services system, respectfully requests \$2 million in *Emergency Solutions Grant – CARES (ESG-CV)* funding, awarded to the City of Cincinnati by the U.S. Department of Housing and Urban Development, to allow expansion of local **Homelessness Prevention Programs** to serve our neighbors in need.

The City of Cincinnati has been awarded approximately \$7.5 million in ESG-CV funding. To date, plans have only been made known pertaining to approximately \$3.5 million of that funding, so our request constitutes about half of the City's remaining ESG-CV funding.

The need for homelessness prevention resources is urgent and great, while three households can be provided with homelessness prevention services for the same cost as serving only one household after that household is already on the street or in a shelter. Additionally, homelessness prevention services are 85% effective in preventing future episodes of homelessness, while a third of families that become homeless, and are assisted after they were already homeless will become homeless again. In short, homelessness prevention services are more cost effective and have better outcomes for at-risk households.

Due to the COVID-19 pandemic and its direct economic impact, the number of families seeking assistance has greatly increased. Our Central Access Point Helpline, the centralized shelter placement helpline for Greater Cincinnati, has experienced a 25% increase in calls for assistance from April to June 2020.



(513) 263-2780 | strategiestoendhomelessness.org | info@end-homelessness.org

2368 Victory Parkway, Suite 600
Cincinnati, Ohio 45206



The CARES Act funding made available to assist families at-risk of homelessness expires on 12/31/2020, but many households will find themselves on the brink of homelessness beyond 2020. On September 2nd, the Department of Health and Human Services and the Centers for Disease Control and Prevention issued an order to temporarily halt evictions through the end of the year.

A temporary halt we agree with, as evictions threaten to increase the spread of coronavirus because they force people to move or go into shared living situations or group settings like our local homeless shelters. However, the halt is not automatic. The order puts the responsibility on the renter to ensure they meet the criteria and to provide a signed written statement to their landlord in order to invoke the protection.

Rent is not canceled, nor forgiven. On January 1st, 2021 renters will be required to pay back rent and landlords may opt to collect rent in one lump sum. As the City of Cincinnati's allocation of ESG-CV funding can be spent over a two year period, it's this funding that can provide assistance to households we know will be struggling for help in 2021 and 2022, long after CARES Act funding has been exhausted.

We appreciate your consideration of this request, and appreciate your support and partnership to help end homelessness in the City of Cincinnati.

Homelessness Prevention Efforts ESG-CV funds would support:

Under the umbrella of Homelessness Prevention, two separate projects seek to prevent homelessness in Cincinnati/Hamilton County- Shelter Diversion and Eviction Prevention.

1) Shelter Diversion

As part of our comprehensive system of care, our Shelter Diversion program plays a critical piece of solving homelessness by targeting individuals and families who, statistically, are most likely to find themselves in an emergency shelter or on the streets in the near future – those who have already lost their housing, are now living in doubled-up situations and running out of such places to stay.

Shelter Diversion programming provides rental and utility assistance to households that are doubled-up and at-risk of having to enter an emergency shelter. Instead of experiencing the trauma of homelessness, Shelter Diversion assists households back into their own stable permanent housing.

Shelter Diversion programming is directed primarily toward families.

- Households are identified as appropriate for the Shelter Diversion Program by our Central Access Point Helpline Intake Specialists
- The program offers short-term (3-6 months) rental assistance, provides rental deposit, utility assistance, and oftentimes furniture
- Case management services (provided by Bethany House Services, the Freestore Foodbank, and the Interfaith Hospitality Network of Greater Cincinnati) help households identify and eliminate any barriers to remaining stably housed into the future

Even before COVID-19, 56% of households in need of services were being turned away without any assistance. Clearly, there are many more families in need in our community if capacity were available. ESG-CV funds will be used to increase the capacity of these critical services, to meet the need in our community and assist more families.

- Homelessness Prevention is highly cost-effective and has the best outcomes for clients
- It costs on average \$1,300 per person to keep someone from becoming homeless, compared with \$3,900 per person to assist after they become homeless

2) Eviction Prevention

Since the beginning of the COVID-19 pandemic and economic crash felt across the country, Strategies to End Homelessness has secured funding for Eviction Prevention services, provided in partnership with the Legal Aid Society of Southwestern Ohio. Eviction Prevention provides rental assistance and in some cases legal assistance to stop households from being evicted, thereby preventing households from losing their housing and beginning a likely decent toward homelessness. Strategies to End Homelessness is committed to the continued expansion of Eviction Prevention service, to be provided to the citizens of the City of Cincinnati, in partnership with Legal Aid, the Freestore Foodbank, Talbert House, Society of St. Vincent de Paul, and the Community Action Agency.

By way of example of critical evidence of need, on July 22nd the Hamilton County Commissioners announced a \$3.5M CARES Act Eviction Prevention fund. More than 2,000 families applied for assistance on the first day. As a result, on August 27th, the Hamilton County Commissioners voted to approve an additional \$3.5M CARES Act Eviction Prevention funding, as the response was overwhelming. It is important to note that CARES Act funding will expire on December 31st, 2020. Therefore, our goal is to secure the funding necessary to support local families who find themselves facing eviction in 2021 and beyond. Again, ESG-CV funds can be spent over a two year period.

We need to help keep these families stably housed, in their current properties, not only to prevent the trauma families endure experiencing homelessness, but because of the lack of affordable housing Greater Cincinnati households will have an even harder time finding decent, affordable housing in the future if they have an eviction history.

Amount and Duration of Financial Assistance for Clients

Shelter Diversion: In our experience of coordinating Shelter Diversion programming, families often need 3-6 months of financial assistance to stabilize once coming out of a doubled-up situation. Often there are many other barriers to stability besides just housing including income and other family concerns; which is why intensive Case Management is so important.

Eviction Prevention: An Eviction Prevention partner will complete an assessment with families to determine how many months of assistance are needed to stabilize the household. If they are behind multiple months, those arrears will be prioritized in order to bring them current with the landlord to cancel eviction. If additional months are needed based on the family's income prospects, future months may be requested and approved.

About Strategies to End Homelessness

Strategies to End Homelessness leads the coordinated community effort to end homelessness in Greater Cincinnati. We envision a community in which everyone has a stable home and the resources needed to maintain it. We work to prevent as many people from becoming homeless as possible, provide a high level of assistance those who are homeless, and offer solutions to homelessness through housing.

Strategies to End Homelessness was founded in 2007 as *The Cincinnati-Hamilton County Continuum of Care for the Homeless, Inc.*, for the purpose of coordinating and planning local homeless services through the U.S. Department of Housing and Urban Development's Continuum of Care program. In 2012, we changed our name to Strategies to End Homelessness, a name that more accurately reflects our expanded leadership role in the community.

Under our leadership, the local Continuum of Care system has grown to include street outreach, a centralized intake helpline, emergency shelters, transitional and permanent housing programs, as well as comprehensive homelessness prevention services.

In 2016, Strategies to End Homelessness was designated by the U.S. Department of Housing and Urban Development as a **Unified Funding Agency**. One of only eight Unified Funding Agencies out of 412 Continuums of Care in the nation, to date. To receive and retain this status, an agency must demonstrate robust sub-recipient management and strong financial controls.

The Unified Funding Agency designation gives us a level of authority and autonomy normally reserved for HUD, enabling us to make flexible funding decisions to address the needs of our partner agencies in real time, and to target resources toward ending homelessness.

Strategies to End Homelessness oversees funding on behalf of the City of Cincinnati, Hamilton County, Ohio, Ohio Development Services Agency, Ohio Housing Finance Agency, and the Coalition on Homelessness and Housing in Ohio.

Specific to Federal funding, we administrate the following: Emergency Solutions Grant, Emergency Solutions Grant CARES (partial funding previously awarded for qualifying Agencies supported by the City Human Services Fund), Housing Opportunities for Persons with AIDS, Housing Opportunities for Persons with AIDS CARES, Temporary Assistance for Needy Families, Continuum of Care Program Funding, and the CARES Act funding from the Department of Treasury on behalf of Hamilton County, Ohio.

Today our agency coordinates the work of 30 local nonprofit agencies to end homelessness in Greater Cincinnati by providing services, housing, shelter, and homelessness prevention programs affecting the lives of more than 12,000 people annually.

In part due to our work, and in part due to the strengths of our local partner agencies, Cincinnati is a nationally recognized leader in implementing innovative and effective programs to end homelessness.

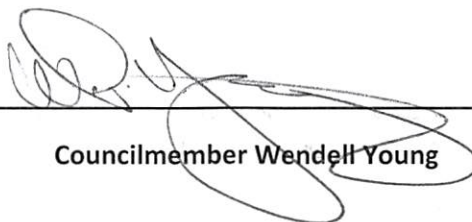


202001435

August 31, 2020

MOTION

WE MOVE that the Administration amend the existing CRA agreement with 2347 Reading Road, LLC, an affiliate of Kingsley + Co., for its 2347 Reading Road hotel project to: (1) extend the project completion deadline through December 31, 2024, and (2) extend the outside tax year by which the abatement would commence through 2024.


Councilmember Wendell Young





BACKGROUND

Kingsley + Co., LLC, through 2347 Reading Road, was awarded a CRA, ordinance No. 352-2018 on November 15, 2018. This CRA relates to the construction of a 113 room hotel at 2347 Reading Road in Mt. Auburn for a new 73,450 square foot Comfort Inn at a construction cost of \$8,393,194.

Under the terms of this CRA Kingsley + Co., LLC, agreed to three special provisions in addition to the agreement with CPS. First, Kingsley + Co., LLC, agreed to a 50% VTICA one half of which would be designated for urban redevelopment in Mt. Auburn and the other half to affordable housing city wide. Second, Kingsley + Co., LLC, agreed to financially support a youth wellness program at William Howard Taft Elementary School. And third, Kingsley + Co., LLC, agreed that 64% of the new full-time employees would be paid at no less than \$15 per hour. Relative to overall employment, Kingsley + Co., LLC, committed to 17 new full-time employees at the hotel with a total annual payroll of \$550,000, five part time employees at a total payroll of \$140,000 and 120 construction jobs at a payroll of \$7.5 Million.

Under the terms of the CRA, this project was to be completed by September 31, 2019. The focus of the requested amendment is to address a new completion date necessitated by the challenges of Covid 19.



James J. McGraw Jr.

Partner

D: 513.639.3968

jmcgraw@kmklaw.com

September 24, 2020

David S. Mann, Esq.
Mann & Mann, LLC
1900 Kroger Building
1014 Vine Street
Cincinnati, OH 45202

Re: Pending Motion by Council Members Young and Kearney to Approve an
Extension of the Project Completion Date of a CRA for 2347 Reading Road LLC

Dear Council Member Mann,

Thanks for sharing Carol Gibbs' September 22, 2020 letter with me yesterday morning. On behalf of Chinedum Ndukwe and Kingsley + Co, we are agreeable to continuing this matter before your Budget & Finance Committee until Monday, October 5th as requested in Ms. Gibbs' letter. In the interim, Mr. Ndukwe will be working with the Mt. Auburn Community Council and MACDC to craft an appropriate community agreement.

This extension of time does require the agreement of Markiea Carter relative to the CRA default letter. We previously requested that the timeline on the default letter be extended until the end of October so that there would be adequate time for proper consideration by the Budget & Finance Committee as well as approval of the Committee's recommendation by Council. So assuming Markiea's agreement, we are fine with this matter returning to your Committee on October 5th.

Sincerely,

KEATING MUETHING & KLEKAMP PLL

By: 

James J. McGraw Jr.

Partner

JJM/cm

10281869.1

Keating Muething & Klekamp PLL

Attorneys at Law

One East Fourth Street | Suite 1400 | Cincinnati, Ohio 45202

P: 513.579.6400 | F: 513.579.6457 | kmklaw.com



James J. McGraw Jr.

Partner

D: 513.639.3968

jmcgraw@kmklaw.com

September 22, 2020

David S. Mann, Esq.
Mann & Mann, LLC
1900 Kroger Building
1014 Vine Street
Cincinnati, OH 45202

Re: Pending Motion by Council Members Young and Kearney to Approve an Extension of
the Project Completion Date of a CRA for 2347 Reading Road LLC

Dear Council Member Mann,

I represent Chinedum Ndukwe and his company Kingsley + Co which is the managing partner of 2347 Reading Road LLC. On September 14, 2020 at the Budget & Finance Committee, a motion by Council Members Young and Kearney was offered to provide an extension of time to complete the construction of a 113 room Comfort Inn at this site in Mt. Auburn. This matter has been continued until September 28, 2020 pending a report by Markiea Carter to provide Council Members additional information relevant to this motion. In my effort to assist this process, please allow me to offer the following information.

The existing CRA was approved by Council on November 15, 2018 providing a 60% property tax abatement for 15 years in contemplation of the construction of a 113 room Comfort Inn Hotel at a cost of approximately \$8.4 Million.

The idea behind this project was to bring a valuable new redevelopment project to Mt. Auburn with both construction as well as permanent and part time jobs. Specifically, 120 construction jobs at a payroll of \$7.5 Million, 17 full time permanent jobs and 5 part time jobs collectively to operate the hotel at a combined payroll of \$690,000 annually. Within these new jobs for the hotel, Mr. Ndukwe also pledged that 10 of the 17 full time jobs would meet a minimum wage level of \$15 per hour. And in addition, Mr. Ndukwe agreed to support a Youth Wellness Program for Taft Elementary School. Under the terms of the CRA, the project was to be completed by December 31, 2019. The project ran into several unfortunate delays most notably with respect to zoning. The circumstances produced a letter of default from the City's Administration. As is common, the default notice provided a period of time for Mr. Ndukwe to bring his project into compliance. A good portion of this involved complying with proper record keeping requirements most of it dealing with MBEs on the project. With helpful staff assistance from the City, those issues are now in compliance.

The issue now is the completion date. We requested a completion date extension to December 31, 2024. Although this time window is quite lengthy, it is necessitated by Covid 19. This pandemic has destroyed the hospitality industry, especially for small developers like Mr. Ndukwe. The devastation in this industry starts with the Greater Cincinnati Convention and Visitors Bureau which furloughed 90% of its

Keating Muething & Klekamp PLL

Attorneys at Law

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staff. The CVB is starting to slowly rebuild its staff and budget, which is based on hotel room revenues called transient occupancy tax. But even when rebuilt, the CVB's budget and staff will be about one half of what it was before the pandemic. And now the Regional Tourism Network which has been a mainstay of the hotel industry's marketing strategy is being dismantled due to lack of CVB resources on both sides of the river. But perhaps most relevant is a July 30, 2020 study by CBRE on the US hotel outlook. This study, which I am happy to share with you if you like, concludes that the hotel industry will not recover until sometime in 2024. While deep pocketed hotel owners are in a better position to weather this severe storm, small developers like Mr. Ndukwe cannot do so.

Granting the requested extension only helps assure the success of this project for Mt. Auburn. The objective is a successful hotel operating profitably and maintaining the related jobs, income for the employee's families and tax revenues for the City. Without the extension as requested, the project will not succeed. It must have a reliable operating pro forma to assure the flow of funds to complete the construction. Even if it could be constructed, it will not be able to operate. Plainly, this project will fail and the opportunities for Mt. Auburn will not be realized if the extension is not approved by Council. There is no financial cost to the City related to granting this extension. There is indeed a cost to this City by denying this extension request. Jobs, revenues and an improved Mt. Auburn depend on Council's support.

Regarding 2341 Burnett Avenue, there has been a misguided assumption that this property was intended to be part of the hotel project at 2347 Reading Road. It is correct that Chin Ndukwe is the managing member of Burnett Investments LLC. That investor has no financial interest in the hotel development.

2341 Burnett is a residential redevelopment project necessitated by its grossly substandard environment. For example there has been reference to no front door on the building. The front door actually was torn off more than once by either the tenants or their guests. This rather deplorable condition of the building is the condition in which Burnett Investments LLC purchased it. All tenants had 30 day leases. If there happened to be others in that building at that time or later, they were in there without any legal standing other than a guest of one of the tenants or a trespasser.

As we all know, a 30 day lease term means that a landlord has the right to not renew, to raise rent, to change other terms. And of course a tenant has no obligation to remain and can leave at their will without financial obligation once the 30 days expire. Regarding rent, 2341 Burnett Investments never received a penny of rent since it purchased the property. The tenants resided in that building rent free until they vacated.

In notifying the tenants that their 30 day leases would not be renewed, Chin Ndukwe tried to meet with them individually to assist each of them in finding alternative and acceptable housing. I believe that the final three remaining tenants were told to not deal directly with Mr. Ndukwe. I assume this was on the advice of Josh Spring, although I don't know that. Mr. Spring sent Mr. Ndukwe a letter on January 28, 2020 indicating he represented the tenant association which comprises these three people and I would assume is an informal group given that name as a matter of convenience so Mr. Spring could speak on their behalf. The letter included a thorough list of financial demands. Although I'm not familiar with these kinds of situations, the list of demands for these tenants who's leases expired with no renewal rights seem pretty extensive. I believe this is what contributed to Patrick Duhaney's outreach to Mr. Ndukwe to sit down and discuss all of this and I assume to work something out. Mr. Ndukwe was not available on the date Mr. Duhaney suggested as he was in Columbus on other business. Mr. Ndukwe responded to that effect and does not recall hearing from Mr. Duhaney again. However, he did send Mr. Duhaney a letter on February 28, 2020 indicating that the building was unsafe and unsuitable at the time Burnett

Investments purchased it, that the original purchase objective was to rehabilitate the building and recommit it for use as workforce housing, that there were no public subsidies from the City regarding this building, that the Reading Road hotel project was a completely separate project and that his Company had already spent numerous hours attempting to help the tenants with relocation. Mr. Ndukwe does not recall any response from the City to this letter.

As far as I know, if there is any litigation involved in 2341 Burnett Avenue, it is being pursued by these three former tenants for some type of damages incurred. Burnett Investments LLC is not pursuing anything against the tenants at this time for the several months of free rent or anything else related to the property. So if there is such litigation, a judge will resolve any valid claims as the court determines appropriate.

So I believe what we have now are two opportunities to benefit Mt. Auburn. One is the new hotel and the other is a renovated workforce housing multi-family building. Council has an opportunity to help assure the hotel is completed, creates new jobs and brings additional economic life to Mt. Auburn. I don't believe Council is involved in the redevelopment of 2341 Burnett Avenue, but it appears that the redevelopment of this building into acceptable workforce housing would be a good thing.

Mr. Ndukwe is still interested in meeting with any interested members of Council as his good name has been severely tarnished, at best, by the accusations against him. So I respectfully request to any Council members so willing that we meet as soon as possible this week subject to schedules. As you consider this, Mr. Ndukwe asked me to share with you a summary of facts directly from him. They are attached.

We have a chance to improve 2347 Reading Road, the subject of the CRA extension for completion of the project, thereby adding value to the neighborhood and to the City. I hope that I can help Council members reach an agreement that this extension is in the best interest of Mt. Auburn, its residents and our City.

Sincerely,

KEATING MUETHING & KLEKAMP PLL

By: _____


James J. McGraw Jr.
Partner

JJM

September 22, 2020

To: Members of City Council Budget & Finance Committee:
From: Chinedum Ndukwe

My request to City Council is to correct misrepresentations about me and avoid harm to Mt. Auburn development. Please consider these facts relative to these two properties:

2341 Burnet Avenue

- No rent was ever collected from any tenants since purchasing the building.
- Building owners spent \$20,000 on maintenance, electric bills, clean up, repairs, moving expenses, and deposit returns from December 2019 to July 2020 for former tenants.
- Kingsley successfully connected with all but three former tenants. These tenants were advised not to engage with Kingsley. Kingsley made numerous attempts to contact tenants to offer assistance.
- Kingsley was left with no choice but to file for eviction after the Company was unable to reach these three remaining tenants to arrange an amicable path forward. The eviction action and claims for back rent were ultimately dropped by Kingsley. All remaining tenants vacated the building.
- Alice Engleman who spoke to Council against Kingsley on September 14th introduced by Josh Springs was never a tenant of 2341 Burnet Ave.
- No tenant was set out or kicked out of the building. All tenants either moved out on their own or signed settlement and waiver of all claims agreements.
- Josh Springs with several of his clients defaced Kingsley + Co.'s downtown office posting statements on the walls and came onto the property in an effort to intimidate me, my wife, my small son and babysitter who were all in my office at that time. The building owner had to invest in a security system to limit access.
- Josh Spring and his Homeless Coalition have not been truthful about me or my Company and have discouraged community leaders and community development partners from supporting the 2347 Reading Road hotel project.
- Mt. Auburn Community Council Board voted via email last week, I believe through Josh Springs' effort, to oppose the 2347 Reading Rd CRA extension. This vote was passed without any communication or discussion with Kingsley + Co., thus prohibiting the Board from considering the benefits of the CRA pending extension as well as the facts surrounding 2341 Burnet Avenue. As of Monday evening 9/21, they have rescinded their opposition to the CRA extension and a task force will now work with Kingsley on community engagement.

2347 Reading Road CRA

- This CRA contains a \$15 per hour wage commitment for ten of the 17 full time jobs
- This CRA contains a commitment to support the Taft Elementary School.
- The pending request to Council is for additional time to complete the project. With the hospitality industry not expected to recover from the pandemic until 2024 denial of the extension requested will negatively affect Cincinnatians in good paying jobs.
- Discouraging support of the CRA extension is a targeted attack against a black owned business when our nation is hungry for success stories about government support for minorities.
- This project will fail without the CRA extension

Respectfully submitted,

Chinedum Ndukwe
Kingsley + Co.

10275018.1

Checcho, Gerald

From: Carol Gibbs <csbgibbs@aol.com>
Sent: Tuesday, September 22, 2020 11:48 AM
To: Mann, David
Subject: [External Email] Tax abatement extension for Kingsley + Co

External Email Communication

Mr Mann,

On Monday September 14, the Mt Auburn Community Council voted to rescind our support for Mr Chin Ndukwe's request of an extension of his tax abatement on the hotel that he is building on Reading Rd in Mt Auburn. His commitment to the community of Mt Auburn had not been honored and Mr Ndukwe's treatment of eight low income residents and the situation surrounding their eviction was very troubling to all of us. Mr Ndukwe requested to address the full Mt Auburn Community Council and was given permission.

On Monday September 21, last evening, we spent a great deal of time hashing out our displeasure of his treatment of our residents and his twisting of various facts. A member of our Council made a motion to rescind our support and I, wearing my MACDC hat, made a suggestion to work with Mr Ndukwe to come up with another community agreement with a timeline signed by both community organizations and Mr Ndukwe representing Kingsley + Co and all other LLCs that are involved with Mt Auburn

I am requesting both from MACDC and as a Board member of MACC, that we be allowed to submit this agreement to Cincinnati City Council as part of a binding condition of his tax abatement and request that we are given until Monday October 5 to present that agreement at the Budget and Finance Committee meeting for consideration.

Thank you

Carol

Carol Gibbs
President/CEO
Mt Auburn Community Development Corporation
MACDC



Betsy Sundermann

Cincinnati City Councilmember

August 31, 2020

MOTION

WE MOVE the City Administration prioritize the payoff of the \$50 million operating debt for emergency financing which was incurred by the City of Cincinnati for unforeseen and other necessary expenses that have arisen due to the COVID-19 pandemic.

Prioritization means earmarking any available closeout monies for the payment of the loan after the Funds Stabilization Policy distributions have been made to the General Fund Carryover Balance and Reserve for Weather and One Time Events per City Council Ordinance, then to the Economic Downturn Reserve Fund, Working Capital Reserves, and Additional Reserves.


Betsy Sundermann

STATEMENT

In previous years, Council has been able to use closeout monies for a variety of special and worthy one-time projects that were not necessarily funded in the budget. Since the budget has been devastated by the COVID-19 pandemic, it is most prudent for Council to establish a stabilization plan to secure a strong financial foundation for the City of Cincinnati going forward.

The City's Stabilization Funds Policy via Ordinance 0213-2019 established a Government Finance Officers Association (GFOA), which recommended a goal of 16.7% of general operating revenues to be set aside as reserves by FY2020, the actual reserve funding (i.e. Fund Balance) has hovered in the 10%-12% range during the past five years. Fund Balance is arguably the single most important financial metric to the Bond Rating Agencies and being able to show progress towards this policy goal is a critical factor for the City's credit ratings. It is reasonable to expect that a trend of decreasing fund balance will be a credit negative for the Rating Agencies and could lead to a downgrade. It is also reasonable to expect that an inability to make progress towards the City's policy could lead to negative credit pressure. Negative credit pressure - or a full downgrade - will increase the cost of funding for the City's entire capital program and decrease the City's capacity to fund capital in the future.

Although City Council adopted an amended Funds Stabilization Policy as noted above that adjusted the percentages of various components of the City's reserve accounts, the FY2020 projected fund balance was approximately 11.32%. This meets the minimum reserve of 10.0% that bond rating agencies expect but falls below the Funds Stabilization Policy of 16.7%.

The APPROVED FY2021 Budget Update is not structurally balanced as one-time sources were used to address the revenue shortfall due to the COVID-19 pandemic. Some one-time sources came from State and County CARES dollars. The other one-time source of revenue was a \$10.2 million emergency loan (the balance of \$39.8 million remaining in cash from the \$50 million line of credit) which is scheduled to be paid back using proceeds from the lease of the Cincinnati Southern Railway (CSR). Currently, the CSR revenue is utilized to finance critical capital and infrastructure restoration projects such as roads, city buildings, city parks, recreation and health facilities, sidewalks, and pedestrian safety improvements. The first projected interest payment in the amount of \$1,271,458.33 is scheduled to be paid on June 21, 2021 as part of the FY 2021 budget. If we pay off the \$50 million loan, we will have no other interest payments for these emergency funds.

September 28, 2020

To: Mayor and Members of City Council **202001599**

From: Paula Boggs Muething, Interim City Manager

Subject: **FUNDING AGREEMENT FOR FOUNTAIN PLACE, LLC - THE
FOUNDRY REDEVELOPMENT AT 505 VINE STREET**

Attached is an Emergency Ordinance captioned as follows:

AUTHORIZING the City Manager to execute a Funding Agreement with Fountain Place, LLC, a subsidiary of Cincinnati Center City Development Corporation (3CDC), providing for a forgivable loan of \$2,929,750 to fund redevelopment of 505 Vine Street (formerly known as Fountain Place) and proximate public infrastructure, located in the Central Business District of Cincinnati; **ESTABLISHING** new capital improvement program project account no. 980x164x211636, "Fountain Place Redevelopment – TIF" to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure; **AUTHORIZING** the transfer and appropriation of the sum of \$2,093,071.13 from unappropriated surplus of Downtown/OTR West Equivalent Fund 482 (Downtown/OTR West TIF District) to the newly-established capital improvement program account no. 980x164x211636, "Fountain Place Redevelopment – TIF," to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure; **AUTHORIZING** the transfer and appropriation of the sum of \$836,678.87 from the unappropriated surplus of Fountain Square West Trust Fund 156 to the newly-established capital improvement program project account no.980x164x211636, "Fountain Place Redevelopment – TIF," to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure; and further **DECLARING** expenditures from such project account serve a public purpose.

BACKGROUND/CURRENT CONDITIONS

Fountain Place, LLC is the current property owner of the project referred to as the Foundry, which is located at 505 Vine Street in the Central Business District. This building is commonly known as Fountain Place and is the former home to a Macy's Department store. On December 18, 2019, City Council approved the execution of a Property Sale and Development Agreement between Fountain Place, LLC and the

City. The execution of this PSDA resulted in the sale of the underlying land at 505 Vine Street to 3CDC and the creation of a 30-year, 5709.40(B) TIF on the property. However, upon further review, Fountain Place, LLC determined there need of additional subsidy to complete the project and submitted a Financial Assistance application for the redevelopment of this building. These applications were received and reviewed by DCED.

DEVELOPER INFORMATION

Fountain Place, LLC is a subsidiary of Cincinnati Center City Development Corporation (3CDC). 3CDC is a non-profit organization that has invested over \$1.47 billion dollars in development in Downtown and Over-the-Rhine over the past 15 years. This investment has resulted in 300 apartment units, 534 condominiums, 156 hotel rooms, 320 shelter beds, 1,070,500 square feet of commercial space, and 4,925 parking spaces. 3CDC has completed large office projects similar to the Foundry, including a project across Race Street which is home to the company 84.51°.

PROJECT DESCRIPTION

The Foundry Project is the redevelopment of the building known as Fountain Place into a mixed-use office building with ground-floor commercial space. Once completed, this project will consist of 205,000 square feet of office space, 20,000 square feet of commercial space, and the rehabilitation of an existing 164-parking space garage.

The estimated total project cost for this portion of the redevelopment is \$2,929,750, which includes a full streetscape on Vine Street, Race Street, and 5th Street, the demolition of the skywalk that connects Fountain Place to Carew Tower and repairing of Carew Tower, and exterior demolition of Fountain Place. This project will create 29 temporary construction jobs at an annual payroll of \$1,063,680. This project is in line with the Compete Initiative of Plan Cincinnati. 3CDC received the support of the Downtown Residence Council on August 10th and presented to the Over the Rhine Community Council's Board on September 14th.

PROPOSED INCENTIVE

DCED is recommending a 5-year, forgivable loan of \$2,929,750 for this portion of the project. \$2,093,071.13 of the forgivable loan will come from the Downtown/OTR West TIF District, and the remaining \$836,678.87 will come from the expired Project TIF associated with the original Macy's project in the early 1990s. This incentive is in addition to the previously approved sale of the underlying land at 505 Vine Street to 3CDC and the creation of a 30-year, 5709.40(B) TIF on the property. The streetscape work and the skywalk demolition are considered public improvement projects, and will be primarily funded with TIF district funds, while the exterior demolition, considered a private improvement, will be completely funded by the project TIF money that is associated with this property.

Because of its location off Fountain Square, 505 Vine Street is one of Cincinnati's most important properties. Improving the street-level vibrancy surrounding this property by improving the streetscape is essential to the success of Cincinnati's premier public square. Moreover, the Foundry project in its totality will bring hundreds of office workers to our urban center, improving the long-term sustainability as Cincinnati's urban core as the economic core of our region.

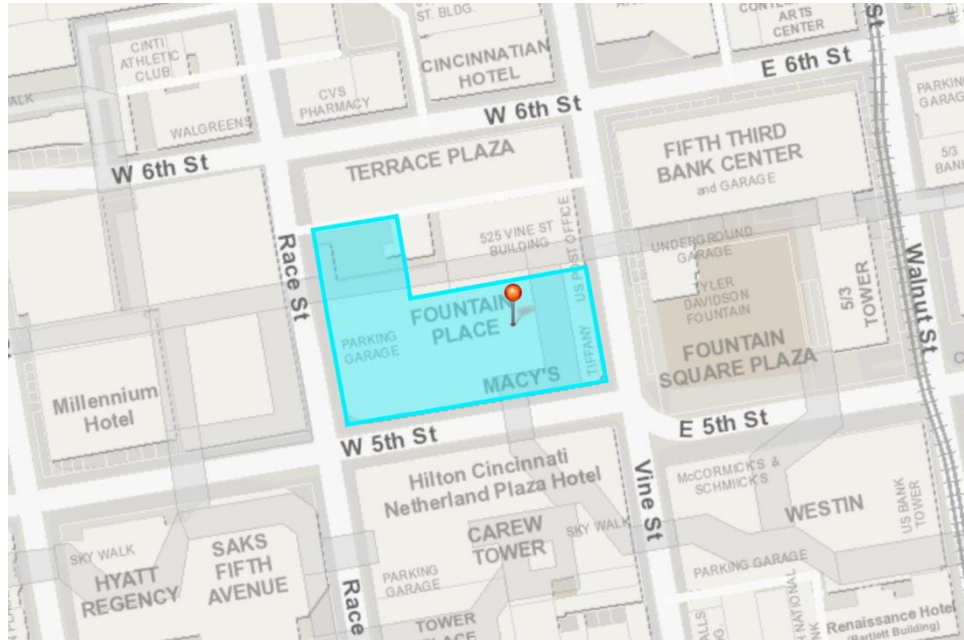
RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance.

Attachment: A. Property location and photographs

Copy: Markiea L. Carter, Interim Director, Department of Community & Economic Development

Attachment A: Location and Photographs



EMERGENCY

SSB

- 2020

AUTHORIZING the City Manager to execute a *Funding Agreement* with Fountain Place, LLC, a subsidiary of Cincinnati Center City Development Corporation (3CDC), providing for a forgivable loan of \$2,929,750 to fund redevelopment of 505 Vine Street (formerly known as Fountain Place) and proximate public infrastructure, located in the Central Business District of Cincinnati; **ESTABLISHING** new capital improvement program project account no. 980x164x211636, "Fountain Place Redevelopment - TIF" to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure; **AUTHORIZING** the transfer and appropriation of the sum of \$2,093,071.13 from the unappropriated surplus of Downtown/OTR West Equivalent Fund 482 (Downtown/OTR West TIF District) to the newly-established capital improvement program project account no. 980x164x211636, "Fountain Place Redevelopment - TIF," to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure; **AUTHORIZING** the transfer and appropriation of the sum of \$836,678.87 from the unappropriated surplus of Fountain Square West Trust Fund 156 to the newly-established capital improvement program project account no. 980x164x211636, "Fountain Place Redevelopment - TIF," to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure; and further **DECLARING** expenditures from such project account serve a public purpose.

WHEREAS, Fountain Place, LLC (the "Developer"), a subsidiary of Cincinnati Center City Development Corporation (3CDC), and the City entered into a certain *Property Sale and Development Agreement*, dated December 23, 2019 (the "Sale Agreement"), which provided for the sale of the City's interest in 505 Vine Street, formerly known as Fountain Place (the "Property"), to Developer and redevelopment by Developer of the existing structure on the site into an office building, retail and commercial space, and rehabilitation of an existing 165-space parking garage (the "Redevelopment Project"); and

WHEREAS, the City seeks to further support the Redevelopment Project by undertaking a rehabilitation of the streetscape proximate to the Property and removal of the existing skywalk bridge that is attached to the Property (the "Public Infrastructure Project"); and

WHEREAS, under the proposed *Funding Agreement*, a copy of which is attached to this ordinance as Attachment A (the "Funding Agreement"), the City will provide a \$2,929,750 forgivable loan to Developer to fund the Public Infrastructure Project and, in-part, the Redevelopment Project; and

WHEREAS, this Council, by Ordinance No. 413-2002 passed on December 18, 2002, created the District 3-Downtown/OTR West TIF District Incentive District (the "TIF District") to, in part, fund "Public Infrastructure Improvement[s]" (as defined in Section 5709.40 of the Ohio Revised Code) that benefit or serve the TIF District, including demolition on private property when determined to be necessary for economic development purposes; and

WHEREAS, the Property and the Public Infrastructure Project are located within the boundaries of the TIF District; and

WHEREAS, this Council, by Ordinance No. 153-1994 passed on May 11, 1994, exempted all “Improvement” (as defined in Section 5709.41 of the Ohio Revised Code) to the Property, from real property taxation for a period of thirty years (the “Project TIF”) and under Ordinance No. 315-1995 passed on September 27, 1995, established an urban redevelopment tax increment equivalent fund, establishing the permitted uses of any service payments collected pursuant to the Project TIF; and

WHEREAS, the proposed expenditures set forth in the Funding Agreement are valid public improvements as they will serve the public purpose of creating jobs and other beneficial economic impacts, supporting the redevelopment of the City’s central business district; and

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

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

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

Section 1. That the City Manager is hereby authorized to execute a *Funding Agreement* with Fountain Place, LLC, a subsidiary of Cincinnati Center City Development Corporation (3CDC) (“Developer”), in substantially the form attached to this ordinance as Attachment A (the “Agreement”), pursuant to which: (a) Developer will complete a redevelopment of 505 Vine Street (the “Property”) in accordance with the *Property Sale and Development Agreement*, dated December 23, 2019, between the parties and will also complete a rehabilitation of the proximate streetscape and removal of the existing skywalk bridge that is attached to the Property (the “Project”), and (b) the City will make a \$2,929,750 forgivable loan to support the Project.

Section 2. That the Director of Finance is authorized to establish new capital improvement program project account no. 980x164x211636, “Fountain Place Redevelopment - TIF,” for the purpose of providing resources for the redevelopment of 505 Vine Street and proximate public infrastructure associated with the Project.

Section 3. That the Director of Finance is hereby authorized to transfer and appropriate the sum of \$2,093,071.13 from the unappropriated surplus of Downtown/OTR West Equivalent Fund 482 to newly-established capital improvement program project account no. 980x164x211636, “Fountain Place Redevelopment - TIF,” to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure, as allowable by Ohio law and as further described in Exhibit C of the Agreement (the “Public Infrastructure Improvements”).

Section 4. That Council hereby declares that the Public Infrastructure Improvements constitute a “Public Infrastructure Improvement” (as defined in Section 5709.40(A)(8) of the Ohio Revised Code), that will benefit and/or serve the District 3-Downtown/OTR West TIF District Incentive District, subject to compliance with ORC Sections 5709.40 through 5709.43.

Section 5. That the Public Infrastructure Improvements are hereby declared to serve a public purpose.

Section 6. That the Director of Finance is hereby authorized to transfer and appropriate the sum of \$836,678.87 from the unappropriated surplus of Fountain Square West Trust Fund 156 to newly-established capital improvement program project account no. 980x164x211636, “Fountain Place Redevelopment - TIF,” to provide resources for the redevelopment of 505 Vine Street and proximate public infrastructure, as allowable by Ohio law and as further described in Exhibit C of the Agreement (the “Public Improvements”).

Section 7. That Council hereby declares that the Public Improvements constitute a “Public Improvement” (as described in Ordinance No. 315-1995 passed by this Council on September 27, 1995) and serve a valid public purpose, as the Public Improvements will create jobs and economic benefits for the City’s central business district.

Section 8. That Council authorizes the appropriate City officials to take all necessary and proper actions as they deem necessary or appropriate to fulfill the terms of this ordinance and the Agreement, including, without limitation, executing any and all plats, deeds, leases, closing documents, agreements, amendments, and other instruments pertaining to the Project, and including granting and accepting any and all associated easements.

Section 9. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to enable Developer to move forward with the Project as soon as possible and finalize all necessary financing, which will result in the creation of jobs and the stimulation of economic growth in the Central Business District of Cincinnati at the earliest possible date.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____

Contract No. _____

FUNDING AGREEMENT

between the

CITY OF CINCINNATI

and

FOUNTAIN PLACE, LLC

Project: The Foundry - Redevelopment of Fountain Place
(Loan in the amount of \$2,929,750)

Date: _____, 2020

FUNDING AGREEMENT

This FUNDING AGREEMENT (the “**Agreement**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 805 Central Avenue, Suite 700, Cincinnati, OH 45202; Attention: Department of Community and Economic Development (the “**City**”), and **FOUNTAIN PLACE, LLC**, an Ohio limited liability company, the address of which is 1203 Walnut St, 4th Floor, Cincinnati, OH 45202 (“**Developer**”).

Recitals:

A. Pursuant to a certain *Property Sale and Development Agreement* executed between the Developer and the City and dated December 23, 2019 (the “**Sale Agreement**”), the Developer purchased from the City and the City conveyed to the Developer fee title to certain real property located at 505 Vine Street, Cincinnati, Ohio 45202 (Hamilton County Parcel ID: 077-0002-0059-00), as more particularly described on the attached Exhibit A (Property) (the “**Property**”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Agreement.

B. Pursuant to the terms of the Sale Agreement, the Developer is obligated to undertake a full redevelopment of the Property, creating approximately 205,000 square feet of office space, 20,000 square feet of commercial retail space, and rehabilitation of an existing 164-space parking garage (the “**Private Improvements**”, which is referred to in the Sale Agreement as the “Project” and as modified in Section 5(A) below). Additionally, Developer seeks to undertake redevelopment of the proximate streetscape and removal of the existing skywalk bridge that crosses over Fifth Street and connects the Property with Carew Tower, as more particularly described in Exhibit B (Scope of Public Improvements & Budget) (the “**Public Improvements**”, the Public Improvements referred to collectively herein with the Private Improvements as the “**Project**”).

C. Section 13 of Article VIII of the Ohio Constitution provides that, in order to create or preserve jobs and employment opportunities, and to improve the economic welfare of the people of the state, it is in the public interest and a proper public purpose for the state or its political subdivisions, or not-for-profit corporations designated by them, to acquire, construct, enlarge, improve or equip, and to sell, lease, exchange or otherwise dispose of, property, structures, equipment and facilities for industry, commerce, distribution and research, and to make loans and to provide moneys for the acquisition, construction, enlargement, improvement or equipment of such property, structures, equipment and facilities.

D. Developer has requested a loan from the City to partially finance construction of the Project. In furtherance of the herein described public purposes and upon the terms and conditions set forth in this Agreement, the City desires to lend to Developer a loan in the principal amount of up to \$2,929,750.00 (the “**Loan**”). The Loan shall be made using (i) \$2,093,071.13 in funds generated from the Central Business District-OTR West Tax Increment Financing District (the “**TIF District**”), a tax increment financing district established pursuant to Ohio Revised Code 5709.40(C) (the “**TIF District Funds**”) and (ii) \$836,678.87 in funds generated from service payments relating to the Property made pursuant to Ordinance 153-1994 passed by City Council on May 11, 1994, as amended by Ordinance No 545-2019, passed by City Council on December 18, 2019, which declared certain improvements on the Property to be a public purpose and exempt from taxation pursuant to Ohio Revised Code 5709.41 (the “**Project TIF Funds**”).

E. The City has determined that providing Developer with the Loan to in-part finance the Project is commercial in nature, that the Project will create employment opportunities, stimulate economic growth and tourism in the area, and help to revitalize the Central Business District and achieve the City’s urban redevelopment goals, and that therefore the Project constitutes a proper public purpose. Further the City has determined that such Project will benefit or serve the TIF District, as the Project will redevelop underutilized real estate and generate economic benefits and employment opportunities that will positively impact such area.

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

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

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

2. **Due Diligence.**

(A) **Due Diligence Materials.** Promptly following the Effective Date, Developer shall deliver the following items to the City for its review and approval, all of which shall be in a form and substance acceptable to the City (collectively, “**Due Diligence Materials**”):

- (i) **Title Commitment:** A commitment of title insurance for the Property, for issuance of both an owner’s policy and a lender’s policy of title insurance, prepared by a reputable national title insurance company and in such form acceptable to the City, evidencing the title company’s commitment to issue an Owner’s Policy of Title Insurance to Developer and a Lender’s Policy of Title Insurance to the City (the “**Title Commitment**”);
- (ii) **Environmental Report:** An environmental assessment report for the Property, starting with a Phase I assessment and including any additional assessments as may be required by the City’s Office of Environment & Sustainability if appropriate, prepared by a qualified environmental professional in a form acceptable to the City;
- (iii) **Insurance:** Evidence that Developer has secured all insurance policies required by the Loan Documents (as defined below);
- (iv) **Financing:** Evidence that Developer has secured or will be able to secure all financing necessary to complete the Project; and
- (v) **Other Information:** Such other information and documents pertaining to Developer or the Project as the City may reasonably require.

Once the Due Diligence Materials have been approved by the City, Developer shall not make or permit any changes thereto without the prior written consent of the Director of the City’s Department of Community and Economic Development (“**DCED**”). The City may, in its sole and absolute discretion, waive the requirement for delivery of any of the Due Diligence Materials or may permit that any of the Due Diligence Materials be delivered at a later date. Developer shall complete all of its due diligence investigations at no cost to the City.

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

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

3. Loan Terms and Disbursement Conditions.

(A) Amount of Loan; Eligible Uses. Subject to the terms and conditions of this Agreement, the City agrees to lend the Loan to Developer, and Developer agrees to borrow the Loan from the City. The Loan will be made with (i) the TIF District Funds (ii) the Project TIF Funds. The Loan shall not exceed \$2,929,750.00. The proceeds of the Loan shall be used solely to finance those items described in Exhibit C (Eligible Uses) to this Agreement, as specified for the TIF District Funds or the Project TIF Funds (collectively, the “**Eligible Uses**”), and for no other purpose. For the avoidance of doubt, Developer shall not use any portion of the Loan to pay for the purchase of inventory, supplies, furniture, trade fixtures, or any other items of personal property, or to establish a working capital fund.

(B) Note & Mortgage. Prior to disbursement of the Loan, Developer shall (i) execute a promissory note in the form of Exhibit D (Form of Promissory Note) hereto (the “**Note**”), and (ii) execute and record a mortgage, in the form of Exhibit E (Form of Mortgage) hereto, in favor of the City (the “**Mortgage**”; this Agreement, the Note, the Mortgage, the Guaranty (as defined below), and any other documents executed by Developer to evidence the Loan are referred to herein collectively as the “**Loan Documents**”). Developer shall repay the Loan in accordance with the terms of the Note, and the Note and Mortgage shall be in the full amount of the Loan. If Developer fails to timely complete any obligations with respect to the Project, as and when required under this Agreement or the Note, the City may declare all amounts of the Loan disbursed by the City to be immediately due and payable and may foreclose on the Developer’s interest in the Property by enforcing the Mortgage. Upon the earlier of payment in full or forgiveness of the Loan, upon written request by Developer, the City shall prepare and execute a release of the Mortgage, to be recorded at the sole cost of Developer.

Notwithstanding the forgoing, the City recognizes and accepts that the Developer will request that the City subordinate its interest in the Mortgage to the primary construction financier of the Project, who will require a first-priority mortgage lien interest in the Property. Upon request, the City agrees to execute a subordination agreement substantially in the form of Exhibit F (Form of Subordination Agreement) or in such other form acceptable to the City documenting or confirming such subordination. The City acknowledges that the subject Project will be challenging to finance and therefore agrees to work in good-faith with the Developer on ensuring that the Mortgage does not become an obstacle to securing additional financing for the Project.

(C) Payment and Completion Guaranty. Cincinnati Center City Development Corporation, an Ohio non-profit corporation known as 3CDC (the “**Guarantor**”), is the parent company of Developer and will benefit from the Project; therefore, as a condition of the Loan, Guarantor shall have executed a *Payment and Completion Guaranty* substantially in the form of the attached Exhibit G (Form of Payment and Completion Guaranty) (“**Guaranty**”).

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

- (i) Due Diligence Materials Approval: Approval by the City, in its sole discretion, of all Due Diligence Materials;
- (ii) Loan Documents: Delivery to the City of executed copies of all Loan Documents;
- (iii) Guaranty: Delivery to the City of the fully executed Guaranty, executed by Guarantor;
- (iv) Security Interest: Delivery to the City of evidence satisfactory to the City that Developer has taken all such action, executed and delivered or caused to be executed and delivered all such documents and instruments, including a counterpart of the executed Mortgage, which upon recording in the Hamilton County Recorder’s office will create a valid and perfected security interest for the City in the Property;
- (v) Community Engagement: Evidence that Developer has engaged the applicable community council regarding the Project;

- (vi) Title Insurance Policy: Evidence that the title insurance company is ready to issue a Title Insurance Policy pursuant to the Title Commitment, which was approved by the City;
- (vii) No Default: Developer is in full compliance with all requirements under the Loan Documents; and
- (viii) Project Completion: Sufficient evidence that the Developer is prepared and capable of otherwise undertaking and completing all necessary actions to commence the Project promptly following disbursement of the Loan and thereafter to pursue completion of the Project in a timely manner and otherwise in accordance with the terms of this Agreement.

The City may, in its sole and absolute discretion, waive in writing any of the Disbursement Conditions or require that any such condition be satisfied at a later date.

(E) Right to Terminate. Notwithstanding anything to the contrary in this Agreement, if for any reason the Disbursement Conditions have not been satisfied by **June 31, 2021**, then the City may terminate this Agreement by providing written notice to Developer of such termination, and thereafter neither party shall have any rights or obligations to the other; *provided however*, such timeframe for satisfaction of the Disbursement Conditions may be extended by the Director of DCED upon written approval of such extension.

(F) Disbursement Procedure. The City shall disburse the Funds to Developer in accordance with Exhibit H (Disbursement Requirements) hereto. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the City be obligated to make disbursements of the Loan (i) if any portion of the Project does not meet the requirements of the City; (ii) except to reimburse Developer for actual costs of constructing the Project incurred in accordance with the terms herein; or (iii) in excess of the Loan. If the amount of funds necessary to finance all Eligible Uses is *less than \$2,929,750.00*, the amount of the Loan made available by the City under this Agreement shall be reduced to such lesser amount. In no circumstances shall the City be obligated to disburse proceeds of the Loan in an amount in excess of the proceeds necessary to finance the Eligible Uses.

(G) No Other City Assistance. Except for the City's agreement to provide the Loan as described in this Agreement and other such assistance described in the Sale Agreement, the City shall not be responsible for any costs associated with the completion of the Project.

4. Public Improvements.

(A) Preliminary Plans. As soon as available, if not already delivered, the Developer shall develop preliminary plans and specifications for the Public Improvements, and the Developer shall submit such plans and specifications to the City's Department of Transportation and Engineering ("**DOT**") and Department of Economic and Community Development ("**DCED**") for review and approval.

(B) Final Plans.

(i) Plan Revisions. Following delivery of the preliminary plans in accordance with Section 4(A), Developer and the City shall work collaboratively to revise the preliminary plans to incorporate all parties' comments and otherwise combine the preliminary plans into a set of comprehensive construction drawings and specifications.

(ii) Final Plans. Following revision of the preliminary plans, Developer shall proceed with preparing final drawings, plans, and specifications for the Public Improvements and upon completion shall submit copies to the City for the City's final review and approval. The parties agree to work diligently and cooperatively with each other in order that the drawings, plans, and specifications can be finalized and approved by the City as expeditiously as possible. The drawings, plans, and specifications (including any and all changes thereto reflected on properly executed Change Orders (as defined below)) for each category of improvements, as approved by the City

are referred to herein as the “**Final Plans.**”

(C) Project Change Orders. Once approved by the City, Developer shall not make any changes to the Public Improvements set forth in the Final Plans without the consent of the City. Any material changes to the Final Plans shall be evidenced by a written change order signed by Developer and DCED (each a “**Change Order**”). The City shall review and either approve or deny each proposed Change Order as expeditiously as possible and such approval shall not to be unreasonably withheld, conditioned, or delayed. The City may deny Change Orders to the Public Improvements in its reasonable discretion. The City shall not require any material changes to the Final Plans without Developer’s consent, which shall not be unreasonably withheld, conditioned, or delayed. Developer shall promptly execute Change Orders to reflect approved changes.

(D) Bidding Phase. Developer shall work cooperatively with the City in soliciting, reviewing, and selecting the bids for the construction of the Public Improvements. All bids shall be solicited in accordance with the City’s competitive bidding requirements, as further described in Exhibit I (Additional Requirements). If there is a public bid opening, Developer shall permit City representatives to be present at the opening of the bids. Developer shall not solicit bids from any contractors or subcontractors who are listed as debarred by the federal or state government or on the City’s Vendor’s Performance list. In reviewing and considering bids, Developer shall bear in mind that all contractors and subcontractors performing any work in connection with the Public Improvements shall be subject to the City’s approval in its sole discretion. Developer and the City shall work cooperatively to select the winning bids. The City shall use reasonable efforts to notify Developer, within ten (10) business days after the opening of the bids, of the City’s approval or disapproval of the bids, as the case may be. If the City does not approve of the bids, Developer shall work cooperatively with the City to resolve the City’s objections, including for example revising the Final Plans and re-bidding all or part of the Project. The City shall, in its sole discretion, have final approval of all bids for the Public Improvements. The final bids, as approved by the parties, and as the same be adjusted from time to time by Change Orders, are hereinafter referred to as the “**Final Bids.**”

Notwithstanding the foregoing, if the City does not approve of the bids proposed by the Developer for the Public Improvements and the Developer cannot resolve all City objections, then either party may terminate this Agreement, and both parties thereafter shall have no obligations or rights under this Agreement. Additionally, if Developer does not approve of the bids it receives for the Public Improvements, Developer may terminate this Agreement, and both parties thereafter shall have no obligations or rights under this Agreement.

(E) Budget. Prior to commencement of construction of the Project, Developer shall present to the City a final itemized budget for the Project, with independent itemized sections detailing expenditures for the Private Improvements and the Public Improvements (as the same may be amended from time to time and approved by the City, the “**Budget**”), generally consistent with the preliminary budget for the Public Improvements in Exhibit B.

(F) Construction Contracts. Upon the City’s receipt and approval of the Due Diligence Materials for the Project and the parties’ approval of the Final Plans, Budget, and Final Bids, and once the parties are otherwise ready to move forward with construction of the Public Improvements, the Developer shall enter into a guaranteed maximum price or stipulated sum construction contract, in such form as approved by the City, with the general contractor for the Project (the “**General Contractor**”) in an amount not to exceed \$1,481,424 or such other amount approved by the City for the Public Improvements. Developer shall be responsible for reviewing and approving all construction contracts and, upon the City’s request, provide a copy of the construction contracts to the City. Developer shall require in all contracts that it enters into relating to the Project, including the construction contract with the General Contractor, compliance with the terms of this Agreement and that all subcontracts incorporate and comply with the terms of this Agreement.

(G) Reserved.

(H) Construction Commencement and Completion. Following execution of the construction contracts described in Section 4(F), Developer shall commence construction of the Public Improvements.

Developer shall cause the Public Improvements to be completed in accordance with the approved Final Plans, in accordance with the City-approved construction schedule, and in a good and workmanlike manner. Developer shall provide all supervision, technical personnel, labor, materials, and services necessary to complete the Public Improvements.

(I) Verification of Construction Costs. During construction of the Public Improvements and upon completion thereof, Developer shall provide the City with verification of actual construction costs for the Public Improvements, including individual and actual construction costs for the Public Improvements and the Private Improvements and such other pertinent information pertaining to the construction of the Project or performance by Developer of its obligations under this Agreement as the City may reasonably request. Developer shall not be responsible for verifying to the City the quantities of materials utilized in the Public Improvements; the City shall assume the responsibility for oversight, inspection, and verification as to the quantity of materials installed and utilized in the Public Improvements. Developer and the City agree to work collaboratively to ensure that the General Contractor and subcontractors provide adequate information to the City in order to assist in tracking of quantities installed and utilized in the Public Improvements.

(J) Inspection of Work. During construction of the Public Improvements, the City, its employees, and its agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations hereunder. If the City determines that work on the Public Improvements is not in accordance with the Final Plans or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, then the City shall notify Developer who shall have 30 days to cure such error or if it cannot be cured within 30 days Developer shall initiate and diligently pursue such cure. If Developer fails to cure or initiate and diligently pursue such cure within 30 days, the City shall have the right, in its reasonable judgment, to stop such work and order its replacement at Developer's expense (not to be paid for using the Loan), whether or not such work has been incorporated into the Public Improvements by giving notice of such nonconforming work to Developer.

(K) Mechanics' Liens. Developer shall settle, have released, or obtain a bond related to any mechanics' or other similar liens filed on any City or third-party owned real property related to the Project within 45 days of the filing of any such lien.

(L) Project Information; As-Built Plans. During construction, Developer shall provide the City with such additional pertinent information pertaining to the Project or Public Improvements as the City may reasonably request. Following completion of construction, the Developer shall provide the City with a set of as-built plans of the Public Improvements and shall provide the City such other information pertaining to the Project or Public Improvements as the City may reasonably request.

5. Additional Terms.

(A) Amendment to Description of Project in Sale Agreement; Commencement and Completion of Construction of Private Improvements. The parties acknowledge and agree that the plans for the Private Improvements have been updated to include development of approximately 150,000 square feet of office space, 35,000 square feet of commercial space, and rehabilitation of an existing 164-space parking garage. The description of the "Project" in the Sale Agreement, to the extent inconsistent with this updated description, are hereby amended by the parties, and the term "Private Improvements" in this Agreement shall refer to such updated description of the "Project." Developer shall commence and complete the Project and the Private Improvements in accordance with the terms of the Sale Agreement, as amended by this Section.

(B) Applicable Laws. Developer shall obtain and maintain all necessary City and other governmental permits, licenses and other approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to the Project and the Property including without limitation those set forth on Exhibit I (Additional City Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain

whatever variances, permits or other approvals from the City's Department of Buildings and Inspections, the Department of City Planning, City Planning Commission, or City Council that may be required in connection with the Project.

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

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

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

(E) Environmental Indemnity. As a material inducement to the City to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Property that exists at or prior to the time of the City's execution of this Agreement (herein, a "**Pre-existing Environmental Condition**"), and regardless of whether or not such Pre-existing Environmental Condition is described in any environmental assessment or any other environmental report that may have been generated in connection with this Agreement, Developer shall: (i) at no expense to the City, promptly take all steps necessary to remediate such Pre-existing Environmental Condition, within a reasonable time after discovery, to the satisfaction of the City's Office of Environmental Quality; and (ii) defend, indemnify, and hold the City harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the City as a result of or arising from any such Pre-existing Environmental Condition. Developer's remediation and indemnity obligations under this paragraph shall survive Developer's completion of the Project.

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

6. Casualty; Eminent Domain. If, during the Term of this Agreement, the improvements on the Property are damaged or destroyed by fire or other casualty, or if any portion of the Property is taken by exercise of eminent domain (federal, state or local), Developer shall cause the Property to be repaired and restored, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the property was in immediately prior to such occurrence. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including without limitation obtaining the City's approval of the plans and specifications if they deviate from the final plans and specifications as

initially approved by the City hereunder. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the affected property is being repaired or restored.

7. Default; Remedies.

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

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

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

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) terminate this Agreement by giving Developer written notice thereof; (ii) take such actions in the way of “self help” as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Developer; (iii) require repayment of any and all of the Loan previously disbursed by the City to Developer under this Agreement; and (iv) exercise any and all other rights and remedies under this Agreement, under the Note or Mortgage, or otherwise available at law or in equity, including without limitation pursuing an action for specific performance, all such rights and remedies being cumulative. Developer shall be liable for all costs and damages, including without limitation attorneys fees, suffered or incurred by the City as a result of a default of Developer under this Agreement or the City’s termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty, or to pursue any remedy, under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the City be obligated to disburse the Loan to Developer if Developer is then in default under this Agreement.

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

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

(i) Developer is an limited liability company, organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of

the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

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

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

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

(v) Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceedings or investigation affecting Developer that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition or its completion of the 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) Developer does not owe any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

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

8. 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 reasonably requested by the City pertaining to Developer, the Project, or this Agreement, including without limitation financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). If at any time the City deems it necessary to review audited financial statements, Developer shall furnish the same to the City upon the City's written request (not more than once per year). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports for a period of three (3) years after completion of the Project.

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

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

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, which consent may be withheld in the City's sole discretion. The City hereby consents to Developer's collateral assignment of its rights under this Agreement to any construction lender(s) for the Project and to an assignment of Developer's rights under this Agreement to any affiliate of Developer for purposes of completing the Project. Any such permitted assignment shall not act as a release of Developer, unless otherwise agreed to in writing by the City, and any prohibited assignment shall be void.

(ii) Change of Control. Developer shall not permit a Change of Control (as defined below) without the prior written consent of the City, which consent may be withheld in the City's sole discretion. As used herein, "**Change of Control**" means a change in the ownership of Developer such that Guarantor has less than a 51% direct or indirect voting interest in Developer and lack 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.

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

(G) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(H) 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.

(I) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and assigns. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

(J) 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.

(K) 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.

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

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

(N) 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.

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

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

(Q) Exhibits. The following Exhibits are attached hereto and made a part hereof:

- Exhibit A – *Legal Description*
- Exhibit B – *Scope of Public Improvements & Budget*
- Exhibit C – *Eligible Uses*
- Exhibit D – *Form of Promissory Note*
- Exhibit E – *Form of Mortgage*
- Exhibit F – *Form of Subordination Agreement*
- Exhibit G – *Form of Payment and Completion Guaranty*
- Exhibit H – *Disbursement Requirements*
- Exhibit I – *Additional City Requirements*

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

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

FOUNTAIN PLACE, LLC

By: _____

Title: _____

Date: _____, 2020

[CITY SIGNATURE PAGE ATTACHED]

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

Recommended by:

Markiea Carter
Interim Director, Department of Community and Economic Development

Approved By:

Jennifer Mackenzie
Interim Director, Department of Economic Inclusion

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to Funding Agreement

LEGAL DESCRIPTION

Parcel ID: 077-0002-0059-00

Address: 505 Vine Street, Cincinnati, Ohio 45202

Situated in Section 18, Fractional Range 1, Town 4, Cincinnati Township, Hamilton County, Ohio, and being located with the following described points and the boundary thereof:

Commencing at the northeast corner of Fifth Street, a 66 foot right-of-way, and Race Street, a 66 foot right-of-way, said point being the Real Point of Beginning of the parcel herein described; thence with the east line of Race Street North 09° 10' 20" West, 299.24 feet to the south right-of-way line of Thorp Alley, a 10 foot right-of-way; thence with said south line North 81° 06' 50" East, 128.76 feet; thence leaving said south line South 09° 07' 10" East, 123.20 feet; thence North 81° 10' 40" East, 270.96 feet to the west line of Vine Street, a 66 foot right-of-way; thence with said west line South 09° 01' 20" East, 175.29 feet to the north line of Fifth Street; thence with said north line South 81° 03' 00" West, 399.14 feet to the Real Point of Beginning, containing 86,031 square feet more or less.

EXHIBIT B
to Funding Agreement

SCOPE OF PUBLIC IMPROVEMENTS AND BUDGET

I. Scope of Public Improvements

The following descriptions are preliminary descriptions for informational purposes; such designs describing the Public Improvements set forth in the Final Plans shall control in the event of any conflict.

- Streetscape Rehabilitation
 - Sidewalks – Removal and replacement of all sidewalks bordering the Property on Vine Street, 5th Street, and Race Street.
 - Curbs – Granite curbs to be installed with new sidewalks described above.
 - Lighting – New street lights to be installed.
 - Tree Grates and Wells – New street tree wells and tree grates will be installed.
- Removal of Skywalk Bridge – Developer will remove the existing skywalk bridge that connects the Property to the Carew Tower across Fifth Street.
- Restoration of Carew Tower Façade – Developer shall restore the façade and interior of the Carew Tower following removal of the skywalk bridge in accordance with the *Fifth Street (Between Race and Vine) Walkway Agreement* dated December 21, 1995 and Developer's obligations to the City under that certain *Assignment and Assumption of Fifth Street (Between Race and Vine) Walkway Agreement* dated December 24, 2020.

II. Public Improvements Budget

Removal of Skywalk and Carew Tower Restoration	\$186,900
Streetscape Rehabilitation	\$1,246,205
Soft Costs (Engineering, Design, Fees, etc.)	\$48,319
Total	\$1,481,424

EXHIBIT C
to Funding Agreement

ELIGIBLE USES

I. TIF District Funds

Streetscape Rehabilitation as described in <u>Exhibit B</u>	\$ 1,246,205
Skywalk Removal and Carew Tower Restoration as described in <u>Exhibit B</u>	\$186,900
Exterior Demolition of Property	\$589,401.13
Soft Costs	\$70,565
Total	\$2,093,071.13

II. Project TIF Funds

Exterior Demolition of Property	\$836,678.87
Total	\$836,678.87

EXHIBIT D
to Funding Agreement

FORM OF PROMISSORY NOTE

PROMISSORY NOTE

(secured by mortgage on real property, 5% interest rate)

\$2,929,750.00

Cincinnati, Ohio

_____, 2020

FOR VALUE RECEIVED, the undersigned, **FOUNTAIN PLACE, LLC** a limited liability company organized under the laws of the State of Ohio, the address of which is 1203 Walnut St, 4th Floor, Cincinnati, OH 45202 ("**Borrower**"), hereby promises to pay to the order of the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), the sum of two million nine hundred twenty-nine thousand seven hundred fifty dollars and 00/100 dollars (\$2,929,750.00) or so much thereof as the City disburses to Borrower pursuant to that certain *Funding Agreement* between the City and Borrower dated _____, 2020, (the "**Agreement**"), as described below (the "**Loan**"). Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Agreement.

This Promissory Note is secured by a mortgage on real property located at 505 Vine Street, Cincinnati, OH 45202 (the "**Property**"). As more particularly described in the Agreement, Borrower is required to use the Loan proceeds exclusively to pay for the Eligible Uses.

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

(a) Term. The term of the Loan (the "**Term**") shall be 5 years, beginning upon the date of this Promissory Note (the "**Effective Date**") and ending on the 5-year anniversary of the Effective Date (the "**Maturity Date**").

(b) Interest Rate. Interest shall accrue at a rate of five percent (5.00%) per annum on the outstanding amount of the Loan.

(c) Loan Repayment; Deferral; Forgiveness. The Loan shall be repaid by Borrower in accordance with the following:

[i] Payment Deferral Period: All payments on amounts due under the Loan shall be deferred until the Maturity Date.

[ii] Loan Forgiveness: Upon the completion of the Project (as evidenced by the issuance of a certificate of occupancy for the Property), so long as Borrower is then in and has continually been in compliance with all requirements of the Funding Agreement, Sale Agreement, and Loan Documents, then the City agrees to forgive 100% of the outstanding principal balance, any accrued interest, and all other charges or amounts outstanding on the Loan. Upon request by Borrower, the City will provide written confirmation of such compliance and forgiveness.

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

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

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

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

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

4. Due on Sale. If Borrower sells or otherwise transfers title to the Property to a third party without the prior written consent of the City, then the entire principal balance and all accrued interest under this Note shall automatically become due and payable.

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

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

[SIGNATURE PAGE FOLLOWS]

Executed by Borrower on the Effective Date.

BORROWER:

FOUNTAIN PLACE, LLC
an Ohio limited liability company

By: _____

Printed name: _____

Title: _____

Approved as to Form:

Assistant City Solicitor

EXHIBIT E
to Funding Agreement
FORM OF MORTGAGE

[SPACE ABOVE FOR RECORDER'S USE]

Property: 505 Vine Street

MORTGAGE

The undersigned, **FOUNTAIN PLACE, LLC**, an Ohio limited liability company ("**Borrower**"), in consideration of a loan in the principal amount of \$2,929,750.00 made by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), as evidenced by Borrower's *Promissory Note* dated _____, 2020, (as the same may be amended, restated or replaced from time to time, the "**Note**"), hereby grants, with mortgage covenants, to the City the real property described pursuant to the legal description set forth below (the "**Property**"):

Parcel Number: 077-0002-0059-00
Property Address: 505 Vine Street, Cincinnati, OH 4520
Deed Reference: OR _____, Page _____, Hamilton County, Ohio Records.
Legal Description: See attached *Exhibit A*

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

Executed on the date of acknowledgement indicated below.

[SIGNATURE PAGE FOLLOWS]

FOUNTAIN PLACE, LLC

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

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

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

EXHIBIT A
to Mortgage

Legal Description

[DESCRIPTION TO BE INSERTED IN EXECUTION VERSION]

EXHIBIT F

to Funding Agreement

FORM OF SUBORDINATION AGREEMENT

[SPACE ABOVE FOR RECORDER'S USE]
Property: _____

SUBORDINATION OF MORTGAGE

This Subordination of Mortgage is executed by the **City of Cincinnati**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), in favor of _____, the address of which is _____ ("**Senior Lender**").

Recitals:

A. The City holds a *Mortgage* given by Fountain Place, LLC, an Ohio limited liability company ("**Borrower**"), in the principal amount of \$2,929,750.00, recorded in Official Record _____, Page _____, Hamilton County, Ohio Records (the "**City's Mortgage**") encumbering the real property described on Exhibit A (*Legal Description*) hereto.

B. Borrower has executed or intends to execute a mortgage in favor of Senior Lender, in the principal amount of \$_____ (the "**Senior Mortgage**").

C. Pursuant to a *Funding Agreement* between the City and Borrower, the City has agreed to subordinate the City's Mortgage to the Senior Mortgage.

NOW THEREFORE, the City does hereby subordinate the lien of the City's Mortgage to the lien of the Senior Mortgage but without in any other manner releasing or relinquishing the lien, security interest, operation or effect of the City's Mortgage or any other document or instrument. Nothing in this Subordination of Mortgage is intended to confer any rights or remedies on any person or entity other than Senior Lender and its successors and assigns.

Notwithstanding anything herein to the contrary, this Subordination of Mortgage shall automatically become null and void if the Senior Mortgage is not recorded in the Hamilton County, Ohio Records within thirty (30) days from the date of execution hereof.

[SIGNATURE PAGE ATTACHED]

Executed on the date of acknowledgement indicated below.

CITY OF CINCINNATI

By: _____
Paula Boggs Muething, Interim City Manager

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by Paula Boggs Muething, Interim City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street
Cincinnati, OH 45202

Exhibits:
Exhibit A – *Legal Description*

EXHIBIT A
to
Subordination of Mortgage
LEGAL DESCRIPTION

[TO BE ATTACHED TO EXECUTION VERSION]

EXHIBIT G

to Funding Agreement

FORM OF PAYMENT AND COMPLETION GUARANTY

Project: Court Street Redevelopment

PAYMENT AND COMPLETION GUARANTY

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

Recitals:

A. The City and Fountain Place, LLC, an Ohio limited liability company ("**Obligor**") are parties to a *Funding Agreement* dated _____ (the "**Agreement**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Agreement.

B. Pursuant to the Agreement, among other things, Obligor is obligated to complete the Project, which includes the redevelopment of the Property, located at 505 Vine Street, Cincinnati, Ohio 45202. Pursuant to the terms of the Agreement, the City is providing the Loan in the amount of \$2,929,750.00 in order to partially finance the Project, as further described in the Agreement.

C. Guarantor is the parent company of Obligor and will benefit from the provision of the Loan provided by the City in connection with the Project.

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

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

A. Guaranty.

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

(B) If Obligor fails to fulfill one or more of the Guaranteed Obligations, resulting in a notice of default from the City to Obligor under the Agreement, the City shall notify Guarantor thereof in writing. If the City provides notice of default, then Guarantor, within ten (10) days after its receipt of such notice, shall take all steps necessary to cure the default (including, for example, providing additional funding for the Project if necessary). All rights and remedies of the City under this Guaranty are cumulative, and nothing

in this Guaranty shall be construed as limiting the City's rights and remedies available under the Agreement or at law or in equity.

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

2. Liability of Guarantor.

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

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

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

(D) Waivers. Guarantor hereby expressly waives: (i) presentment and demand for payment of any sum payable under the provisions of the Agreement, and protest of any nonpayment thereof; (ii) notice of acceptance of this Guaranty and of such presentment, demand and protest; (iii) notice of any default under this Guaranty or under the provisions of the Agreement, except as stated herein; (iv) demand for observance or performance, and enforcement, of any of the terms or conditions of this Guaranty, and/or of the Agreement, except as stated herein; (v) any and all other notices and demands that may otherwise be required by law to be given or made; and (vi) any and all rights that Guarantor may have to a trial by jury in any action brought on or with respect to this Guaranty, all rights and remedies accorded by applicable law to Guarantor, including, without limitation, any extension of time conferred by any law now or hereafter in effect, and all rights of redemption, homestead, dower and other rights or exemptions of every kind, whether common law or statutory. In addition, Guarantor hereby expressly agrees that, if this Guaranty is enforced by suit or otherwise, or if the City exercises any of its rights or remedies under the provisions of the Agreement upon any default by Obligor in performing any of Obligor's obligations thereunder, Guarantor shall reimburse the City, upon demand, for any and all expenses, including without limitation attorneys' fees, that the City incurs in connection therewith, payable within ten (10) days after the City's written demand.

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

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

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

6. General Provisions.

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

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

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

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

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

(F) Construction. As used in this Guaranty, (i) the term "person" means a natural person, a trustee, a corporation, a partnership, a limited liability company, and any other form of legal entity; and (ii) all references made (a) in the neuter, masculine, or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to any paragraph or subparagraph shall, unless herein expressly indicated to the contrary, be deemed to have been made to such paragraph or subparagraph of this Guaranty, and (d) to Guarantor, the City, and Obligor shall be deemed to refer to each person hereinabove so named and their respective heirs, executors, personal representatives, successors and assigns.

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

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

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

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

[Signature Page Follows]

Executed and effective as of _____, 2020 (the “**Effective Date**”).

GUARANTOR:

CINCINNATI CENTER CITY DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

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

EXHIBIT H

to Funding Agreement

DISBURSEMENT REQUIREMENTS

As used herein, the term "Funds" shall refer to the proceeds of the Loan. The term "Improvements" shall refer to the improvements to be funded as Eligible Uses of the Loan.

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

- (i) All Disbursement Conditions have been satisfied;
- (ii) Developer shall have provided the City with evidence of insurance required under this Agreement;
- (iii) Developer shall have provided the City with evidence that it has obtained all licenses, permits, governmental approvals and the like necessary for the construction work;
- (iv) the parties shall have approved the construction budget and construction schedule for the Improvements;
- (v) Developer's final plans for the Project (including the Final Plans for the Public Improvements) shall have been submitted in accordance with the Sale Agreement and Agreement, as applicable;
- (vi) Developer shall have provided the City with such other documents, reports and information relating to the Project as the City may reasonably request; and
- (vii) Developer shall not be in default under this Agreement or the Sale Agreement.

(B) Disbursement of Funds on a Pro Rata Basis. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall disburse the Funds in accordance with the terms herein. The City shall disburse the Funds on a reimbursement basis and on a "pro rata" basis with the other sources of funds for the Improvements; i.e., the City's Funds shall not be "first in". (For example, if the Funds represent one fourth (1/4th) of the total funds for the Improvements, at no time shall the amount of the disbursed Funds exceed 1/4th of the total amount of the disbursed funds for the Improvements.) Developer shall request the Funds and shall use the Funds solely to reimburse itself for documented hard construction costs paid by Developer to third parties for construction of the Improvements and for no other purpose. Nothing in this Agreement shall permit, or shall be construed to permit, the expenditure of Funds for the acquisition of supplies or inventory, or for the purpose of purchasing materials not used in the construction, or for establishing a working capital fund, or to pay for soft costs, or for any other purpose expressly disapproved by the City. Developer shall not request a disbursement of Funds for any expenditure that is not itemized on or contemplated by the approved budget or if the costs for which the disbursement is being requested exceeds the applicable line item in the budget; however, Developer may request, in writing, that funds be transferred between line items, with the City's approval thereof not to be unreasonably withheld. Disbursements shall be limited to an amount equal to the actual cost of the work, materials and labor incorporated in the work up to the amount of such items as set forth in Developer's request for payment. Anything contained in this Agreement to the contrary notwithstanding, the City shall not be obligated to make or authorize any disbursements if the City determines, in its reasonable discretion, that the amounts remaining from all funding sources with respect to the construction of the Improvements are not sufficient to pay for all the costs to complete construction. Developer acknowledges that the obligation of the City to disburse the Funds to Developer for construction shall be limited to the Funds to be made available by the City under this Agreement. Developer shall provide all additional funds from other resources to complete the Improvements. Notwithstanding anything in this Agreement to the contrary, the City's obligation to make the Funds for construction available to Developer, to the extent such Funds have

not been disbursed, shall terminate ninety (90) days following completion of construction of the Improvements.

(C) Draw Procedure

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

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

(D) Retainage. After review and approval of a disbursement request, the City shall disburse ninety percent (90%) of the amount requested, less retainage equal to ten percent (10%) thereof. The retained amount shall be disbursed when (i) construction of the Improvements has been completed, (ii) the City has obtained final lien waivers and all other conditions to payment set forth in this Agreement have been satisfied with respect to such payment, (iii) Developer has provided the City with a complete set of "as built" drawings for the Improvements if requested by the City, and (iv) Developer has complied with all of its other obligations under this Agreement as determined by the City in its sole discretion.

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

* * *

EXHIBIT I
to Funding Agreement

ADDITIONAL CITY REQUIREMENTS

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "**Construction Workforce Goals**").

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

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

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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

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.

the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

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

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

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

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

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

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach the minimum percentage goals for SBE participation as set forth in Cincinnati Municipal Code Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

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

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

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

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Developer shall comply with the following provisions of the federal

Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2). Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

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

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

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

(M) Wage Enforcement.

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

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

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

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

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other

entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively “investigative bodies”) to release to the City’s Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City’s request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

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

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

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

(N) Americans With Disabilities Act; Accessibility.

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

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a “place of public accommodation” or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then Developer shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, “**Contractual Minimum Accessibility Requirements**” means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building’s primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of “qualifying incentives” for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines “qualifying incentives” as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the

provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, "qualifying incentives" does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised Code 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

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

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

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

SEE ATTACHED

REQUEST FOR PROJECT WAGE DETERMINATION

DATE RECEIVED: 9/3/2020

ORIGINAL ASSIGNED NUMBER:

2019-256

DEI USE ONLY

Fillout and Circle all that Apply Below:

REQUESTING AGENCY OR DEPT:

Community and Economic Development

FUNDING GUIDELINES:

(State or Federal)

CONTACT PERSON AND PHONE
NUMBER:

Giovanni Rocco; 513-352-1960

RATES THAT APPLY:

(Building, Heavy, Highway, Residential)
State building rates will apply.

Requested Date: 09/02/2020

Estimated Advertising Date: 09/14/2020

Estimated Bid Opening Date: 09/21/2020

Estimated Starting Date: 11/01/2020

DECISION NUMBER: N/A

MODIFICATIONS: N/A

SOURCE AND FUND NUMBER

DECISION DATE: 9/4/2020

CITY X FUND 980

EXPIRATION DATE: 12/4/2020

STATE FUND

COUNTY FUND

SUPERSEDES DECISION NUMBER: N/A

FEDERAL FUND

DETERMINATION BY:

Name: Dionne Cherry

PROJECT ACCOUNT NUMBER:

Title: Contract Compliance Specialist

AMT. OF PUB. FUNDING \$: 2,929,750

Date: 9/4/2020

TOTAL PROJECT DOLLARS: 2,929,750

APPROVED BY:


Jennifer B. Mackenzie, Interim Director

NAME OF PROJECT

Fountain Place

DEPARTMENT OF ECONOMIC INCLUSION

COMMENTS:

As described, project exceeds the State Prevailing Wage threshold for building alterations under 4115.03(B)(2)(c), which is \$75,000.

Note: Any changes to the scope, funding or developer(s) on the project or the failure of the project to start within 90 days of the determination will require revisions to this wage determination.

TYPE OF WORK

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

PROJECT LOCATION

This project is located at 505 Vine Street, also known as Fountain Place, Fountain Square West, and/or the Foundry. This building is a 3.5 story building that when renovated will become a 150,000 sf office building with 30,000 sf of commercial space. This project includes streetscape work surrounding the 505 Vine property on Vine, 5th, and Race Streets, which will include installing new sidewalks, new lighting, and new tree grates and wells. This project will also include the exterior demolition of the 505 Vine property. Moreover, there is a sky walk that connects 505 Vine to the Carew Tower at 441 Vine Street (a 49 story building). Fountain Place LLC, a wholly owned subsidiary of 3CDC, will be repairing the portion of the facade of the Carew tower that is damaged by the removal of the sky walk.

PROJECT FUNDING SOURCE

The City is completely funding this project from the Downtown/OTR West TIF district and the Fountain Place West 41 TIF. On December 23, 2019, the City entered into a Property Sale and Development Agreement for this project which included a 30-year, 5709.40(B) TIF.

PROJECT SCOPE OF WORK AND BUDGET

When renovated, this building will become a 150,000 sf office building with 30,000 sf of commercial space. This project includes streetscape work surrounding the 505 Vine property on Vine, 5th, and Race Streets, which will include installing new sidewalks, new lighting, and new tree grates and wells. This project will also include the exterior demolition of the 505 Vine property. Moreover, there is a sky walk that connects 505 Vine to the Carew Tower at 441 Vine Street (a 49 story building). Fountain Place LLC, a wholly owned subsidiary of 3CDC, will be repairing the portion of the facade of the Carew tower that is damaged by the removal of the sky walk.

DEI 217 Form
REV: 6/12/2017

September 28, 2020

To: Mayor and Members of City Council **202001689**

From: Paula Boggs Muething, Interim City Manager

Subject: **CRA TAX EXEMPTION FOR 2330 VP APARTMENTS, LLC**

Attached is an Emergency Ordinance captioned as follows:

APPROVING AND AUTHORIZING the City Manager to execute a Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge) with 2330 VP Apartments, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 2332 Victory Parkway in the Walnut Hills neighborhood of Cincinnati, in connection with the remodeling of an existing building into approximately 35,173 square feet of residential space, approximately 6,400 square feet of office space, and approximately 1,240 square feet of commercial space, which remodeling shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total remodeling cost of approximately \$2,100,000.

BACKGROUND/CURRENT CONDITIONS

The project is located at 2330 Victory Parkway in the East Walnut Hills neighborhood. The property includes an eight-story office building that the applicant reports as mostly vacant. The building also includes structured parking below the ground level.

DEVELOPER INFORMATION

2330 VP Apartments, LLC is a subsidiary of Alaya Properties, a property management and development company based in Cincinnati. They manage multi-family properties in Cincinnati and Northern Kentucky and have renovated multi-family properties in Clifton and Northside. Sandesh Samdaria is the company manager.

PROJECT DESCRIPTION

This project will result in the rehabilitation of an approximately 43,000 square foot mixed-use building. The first floor will include two small storefronts as well as approximately 6,000 SF of office space. The remaining floors will include 37 residential rental units. There are projected to be 12 one-bedroom units and 25 two-bedroom units, with monthly rent ranging from \$1,156 to \$1,388. The cost of construction is estimated to be \$2.1 million and the total project cost is estimated be \$2.8 million. The project is projected to take 9 months to complete.

As a result of the project, *the* developer commits to the creation of 15 temporary construction jobs with \$500,000 in one-time payroll and 24 permanent, full-time jobs with \$720,000 in annual payroll.

The project is in accordance with the “Live” goal to “Create a more livable community” and strategy to “Support and stabilize our neighborhoods” as described on pages 156-163 of Plan Cincinnati.

PROPOSED INCENTIVE

DCED recommends a 15 year, 52% net rate CRA tax exemption. This incentive would be pursuant to the Commercial CRA policy established by City Council. The project scores 14 points as indicated below:

“But For” Analysis (0-3 points) *	3
LEED (0-6 points)	3
Neighborhood VTICA (1 point for contributions over 1% but less than 15% and 8 points for contributions of 15% or more)	8
TOTAL	14

* “But For” Analysis Explanation: 3 points were awarded for the following reasons:

- Even with an abatement, projected return on equity is below 10% for the first 15 years following renovation.
- The new residential development in this mostly vacant building would be in close proximity to both the Walnut Hills and East Walnut Hills Neighborhood Business Districts, supporting the vibrancy of two neighborhood centers.

SUMMARY

Forgone Public Benefit if Project Does not Proceed

CPS PILOT (Forgone New Revenue)	(\$193,032)
VTICA (Forgone New Revenue)	(\$87,742)
Income Tax (Forgone New Revenue)	(\$233,800)
Total Public Benefit Lost	(\$514,574)

Incentive Value	
Annual Net Incentive to Developer	\$20,278
Total Term Incentive to Developer	\$304,171
City's Portion of Property Taxes Forgone	\$75,494
Public Benefit	
CPS PILOT	
Annual CPS Pilot	\$12,869
Total Term CPS PILOT	\$193,032
VTICA	
Annual VTICA	\$5,849
Total Term VTICA	\$87,742
Income Tax (Max)	\$233,800
Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$514,574
Total Public Benefit ROI*	\$1.69
City's ROI*	\$6.82

*If the project were going to happen regardless of incentive, this is the return of real dollars for public benefits as potential future dollars are forgone

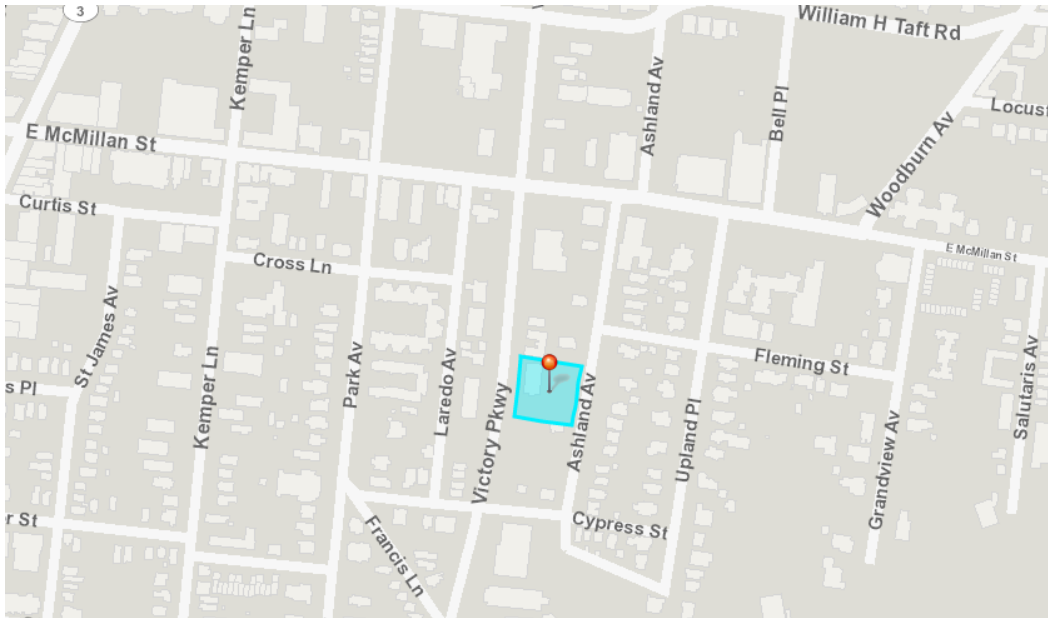
RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance.

Attachment: A. Property location and photographs

Copy: Markiea L. Carter, Interim Director, Department of Community & Economic Development *MLC*

Attachment A: Location and Photographs



Property Location



2330 Victory Parkway

EMERGENCY

City of Cincinnati

TJL

AWB

An Ordinance No. _____

- 2020

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with 2330 VP Apartments, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 2332 Victory Parkway in the Walnut Hills neighborhood of Cincinnati, in connection with the remodeling of an existing building into approximately 35,173 square feet of residential space, approximately 6,400 square feet of office space, and approximately 1,240 square feet of commercial space, which remodeling shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total remodeling cost of approximately \$2,100,000.

WHEREAS, to encourage the development of real property and the acquisition of personal property, the Council of the City of Cincinnati by Ordinance No. 274-2017 passed on September 27, 2017, designated the area within the corporate boundaries of the City of Cincinnati as a "Community Reinvestment Area" pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute"); and

WHEREAS, Ordinance No. 275-2017 passed by this Council on September 27, 2017, as amended by Ordinance No. 339-2018, passed by this Council on October 31, 2018 (as amended, the "Commercial Policy Ordinance"), sets forth certain additional policies, conditions, and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; and

WHEREAS, to encourage the development of real property in a more environmentally-friendly manner, the Commercial Policy Ordinance incentivizes: (i) construction and remodeling to Leadership in Energy and Environmental Design ("LEED") standards (as defined by the U.S. Green Building Council); and (ii) construction and remodeling that obtains (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (collectively, "LBC" standards), all pursuant to the Statute; and

WHEREAS, effective October 23, 2017, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute; and

WHEREAS, 2330 VP Apartments, LLC (the "Company") desires to remodel an existing building located on real property at 2332 Victory Parkway located within the corporate boundaries of the City of Cincinnati into approximately 35,173 square feet of residential space, consisting of

37 rental units, approximately 6,400 square feet of office space, and approximately 1,240 square feet of commercial space consistent with LEED or LBC standards (the “Improvements”), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

WHEREAS, to provide an appropriate development incentive for the Improvements, the City Manager has recommended a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)*, in substantially the form of Attachment A to this ordinance, to authorize a real property tax exemption for the Improvements in accordance with the Statute; and

WHEREAS, the property is located within the Cincinnati City School District of the City of Cincinnati; and

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

WHEREAS, pursuant to the Board of Education Agreement, the Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to 33% of the exempt real property taxes; and

WHEREAS, the Company has represented that it has entered into (or will enter into) a voluntary tax incentive contribution agreement with a third-party organization for amounts equal to 15% of the exempt real property taxes, which funds shall be committed by the third-party organization to facilitate permanent improvements and neighborhood services furthering redevelopment in the neighborhood of the Improvements and to support affordable housing on a City-wide basis; and

WHEREAS, the Improvements do not involve relocation of part or all of the Company’s operations from another county or municipal corporation in Ohio or, if there is relocation, notice has been given per Ohio Revised Code Section 3735.673; now, therefore,

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* 2330 VP Apartments, LLC (the “Agreement”), thereby authorizing a 15-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 2332 Victory Parkway in Cincinnati, as calculated by the

Hamilton County Auditor, in connection with the remodeling of an existing building into approximately 35,173 square feet of residential space, consisting of 37 residential rental units, approximately 6,400 square feet of office space, and approximately 1,240 square feet of commercial space to be constructed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council) or Living Building Challenge standards (as described in the Agreement and as determined by the International Living Future Institute and the Cascadia Green Building Council, as applicable) at a total remodeling cost of approximately \$2,100,000.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and
- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District of the City of Cincinnati, in accordance with Ohio Revised Code Section 3735.672; and
- (iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

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 allow the remodeling described in this ordinance and the corresponding

revitalization of the City of Cincinnati and the benefits to the City's economic welfare to begin at the earliest possible time.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and 2330 VP APARTMENTS, LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.
- E. The Company is the sole owner of certain real property within the City, located at 2332 Victory Parkway, Cincinnati, Ohio 45206 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the remodeling of a building located on the Property to LEED Silver standards, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.
- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing four or more dwelling units, in order to be eligible for tax exemption

the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.

- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. The Company acknowledges that the East Walnut Hills neighborhood is a rising neighborhood in need of resources for development, neighborhood improvements, amenities, and organizations oriented towards neighborhood services. The Company anticipates that future development, improvements, amenities and organizations will contribute to the quality and vitality of the neighborhood, therefore increasing the value of the Property and directly and indirectly contributing to the Project's success. The Project's success, in turn, will benefit the neighborhood. Although this feedback effect will promote the revitalization and redevelopment of the City, it could also impact the affordability of property in the area. Therefore, in support of the East Walnut Hills neighborhood and with the intention of preserving and improving the availability of quality, reliable affordable housing on a City-wide basis, as a material inducement to the City to enter into this Agreement, the Company hereby represents to the City that it will enter into a voluntary tax incentive contribution agreement ("VTICA") with a City-designated third-party non-profit administrative organization (the

"Third-Party Administrator") to contribute to the Third-Party Administrator an amount equal to fifteen percent (15%) of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"). Half of such VTICA Contribution is to be committed by the Third-Party Administrator to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the East Walnut Hills neighborhood and the other half of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

- Q. This Agreement has been authorized by Ordinance No. _____-2020, passed by Cincinnati City Council on _____, 2020.
- R. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel the existing building into approximately 35,173 square feet of residential space, consisting of 37 rental units, approximately 6,400 square feet of office space, and approximately 1,240 square feet of commercial space on the Property (the "Improvements") at an estimated aggregate cost of \$2,100,000 to commence after the execution of this Agreement and to be completed no later than September 30, 2021; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The remodeling shall be in compliance with applicable building code requirements and zoning regulations, as well as complying with the LEED Silver standards. The Company hereby represents that it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Silver. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 15 years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion

of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of remodeling, (B) the cost of remodeling, (C) the facts asserted in the application for exemption, (D) compliance with LEED standards identified in Section 1, and (E) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2021 nor extend beyond the earlier of (i) tax year 2035 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio

Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources. The Company 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, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.
- (v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

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

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create or cause to be created (i) 24 full-time permanent jobs and (ii) 15 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling, and in the case of the other jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees or the number of employees caused to be created by the Company will result in approximately (i) \$720,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$500,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this

Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related

member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

2330 VP APARTMENTS, LLC
Attention: Sandesh Samdaria
2340 Victory Parkway, Suite #41
Cincinnati, Ohio 45206

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

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the

assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

Remainder of this page intentionally left blank. Signature page follows.

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

CITY OF CINCINNATI,
an Ohio municipal corporation

2330 VP APARTMENTS, LLC,
an Ohio limited liability company

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

By: _____

Printed Name: _____

Title: _____

Date: _____, 2020

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Property Address: 2332 Victory Parkway, Cincinnati, Ohio 45206

Auditor Parcel ID: 063-0003-0314-00

Situate in Section 7, Town 3, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Commencing at a point at the intersection of the west line of Ashland Avenue with the north line of Cypress Street; Thence N 09°01'36" E for a distance of 285.0 feet to a 5/8" iron pin found at the north east corner of lands of Kelly L. and Stephen E. Carr and being the true place of beginning of the following described real estate;

THENCE, from said true place of beginning, with said Carr's north line, N 80°58'24" W a distance of 195.41 feet to a mag nail found at the north west corner of lands of The Board of Trustees of The University of Cincinnati and in the East right of way of Victory Parkway;

THENCE with said right of way, with a curve deflecting to the left having length of 190.79', and a radius of 2989.90' subtended by a chord bearing N 06°35'47" E, for a distance of 190.76', to a mag nail found;

THENCE continuing with said right of way, N 04°46'06" E for a distance of 9.44 feet to a mag nail found at the south west corner of lands of Nivas Properties, LLC;

THENCE with said Nivas south line S 80°58'24" E for a distance of 204.20 feet to a 5/8" iron pin found at the south east corner of lands of Gather Cincinnati, LLC and in the West right of way of Ashland Avenue;

THENCE with said right of way, S 09°01'36" W for a distance of 200.00 feet to the place of beginning,

Said property contains 0.9123 acres.

The above described real estate is a combination of the premises described as recorded in O.R. Book 14044, Page 426 of the Hamilton County, Ohio, Deed Records and identified as parcels 063-0003-0008, 0120, 0121, 0122, 0136, 0140, and 0144 on the Tax Maps of said County.

Being the result of a field survey and plat dated 06/17/2020 made under the supervision of John C. Hewett registration No. 7550 in the State of Ohio.

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and 2330 VP APARTMENTS, LLC, an Ohio limited liability company (the "Company").

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.
- E. The Company is the sole owner of certain real property within the City, located at 2332 Victory Parkway, Cincinnati, Ohio 45206 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the remodeling of a building located on the Property to LEED Silver standards, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.
- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing four or more dwelling units, in order to be eligible for tax exemption

the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.

- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. The Company acknowledges that the East Walnut Hills neighborhood is a rising neighborhood in need of resources for development, neighborhood improvements, amenities, and organizations oriented towards neighborhood services. The Company anticipates that future development, improvements, amenities and organizations will contribute to the quality and vitality of the neighborhood, therefore increasing the value of the Property and directly and indirectly contributing to the Project's success. The Project's success, in turn, will benefit the neighborhood. Although this feedback effect will promote the revitalization and redevelopment of the City, it could also impact the affordability of property in the area. Therefore, in support of the East Walnut Hills neighborhood and with the intention of preserving and improving the availability of quality, reliable affordable housing on a City-wide basis, as a material inducement to the City to enter into this Agreement, the Company hereby represents to the City that it will enter into a voluntary tax incentive contribution agreement ("VTICA") with a City-designated third-party non-profit administrative organization (the

"Third-Party Administrator") to contribute to the Third-Party Administrator an amount equal to fifteen percent (15%) of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"). Half of such VTICA Contribution is to be committed by the Third-Party Administrator to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the East Walnut Hills neighborhood and the other half of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

- Q. This Agreement has been authorized by Ordinance No. _____-2020, passed by Cincinnati City Council on _____, 2020.
- R. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel the existing building into approximately 35,173 square feet of residential space, consisting of 37 rental units, approximately 6,400 square feet of office space, and approximately 1,240 square feet of commercial space on the Property (the "Improvements") at an estimated aggregate cost of \$2,100,000 to commence after the execution of this Agreement and to be completed no later than September 30, 2021; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The remodeling shall be in compliance with applicable building code requirements and zoning regulations, as well as complying with the LEED Silver standards. The Company hereby represents that it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Silver. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 15 years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion

of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of remodeling, (B) the cost of remodeling, (C) the facts asserted in the application for exemption, (D) compliance with LEED standards identified in Section 1, and (E) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2021 nor extend beyond the earlier of (i) tax year 2035 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio

Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources. The Company 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, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.
- (v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

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

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create or cause to be created (i) 24 full-time permanent jobs and (ii) 15 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling, and in the case of the other jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees or the number of employees caused to be created by the Company will result in approximately (i) \$720,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$500,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this

Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related

member” shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

2330 VP APARTMENTS, LLC
Attention: Sandesh Samdaria
2340 Victory Parkway, Suite #41
Cincinnati, Ohio 45206

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

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase “Project Assistance by the City of Cincinnati” or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the

assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

Remainder of this page intentionally left blank. Signature page follows.

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

CITY OF CINCINNATI,
an Ohio municipal corporation

2330 VP APARTMENTS, LLC,
an Ohio limited liability company

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

By: _____

Printed Name: _____

Title: _____

Date: _____, 2020

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Property Address: 2332 Victory Parkway, Cincinnati, Ohio 45206

Auditor Parcel ID: 063-0003-0314-00

Situate in Section 7, Town 3, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Commencing at a point at the intersection of the west line of Ashland Avenue with the north line of Cypress Street; Thence N 09°01'36" E for a distance of 285.0 feet to a 5/8" iron pin found at the north east corner of lands of Kelly L. and Stephen E. Carr and being the true place of beginning of the following described real estate;

THENCE, from said true place of beginning, with said Carr's north line, N 80°58'24" W a distance of 195.41 feet to a mag nail found at the north west corner of lands of The Board of Trustees of The University of Cincinnati and in the East right of way of Victory Parkway;

THENCE with said right of way, with a curve deflecting to the left having length of 190.79', and a radius of 2989.90' subtended by a chord bearing N 06°35'47" E, for a distance of 190.76', to a mag nail found;

THENCE continuing with said right of way, N 04°46'06" E for a distance of 9.44 feet to a mag nail found at the south west corner of lands of Nivas Properties, LLC;

THENCE with said Nivas south line S 80°58'24" E for a distance of 204.20 feet to a 5/8" iron pin found at the south east corner of lands of Gather Cincinnati, LLC and in the West right of way of Ashland Avenue;

THENCE with said right of way, S 09°01'36" W for a distance of 200.00 feet to the place of beginning,

Said property contains 0.9123 acres.

The above described real estate is a combination of the premises described as recorded in O.R. Book 14044, Page 426 of the Hamilton County, Ohio, Deed Records and identified as parcels 063-0003-0008, 0120, 0121, 0122, 0136, 0140, and 0144 on the Tax Maps of said County.

Being the result of a field survey and plat dated 06/17/2020 made under the supervision of John C. Hewett registration No. 7550 in the State of Ohio.

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

September 28, 2020

To: Mayor and Members of City Council

From: Paula Boggs Muething, Interim City Manager

Subject: **LEED-CRA COMMERCIAL TAX EXEMPTION FOR TRI-DELTA SORORITY HOUSE, LOCATED AT 2605 UNIVERSITY COURT**

Attached is an Emergency Ordinance captioned as follows:

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Zeta House Corporation of Delta Delta Delta, thereby authorizing a 14-year tax exemption for 100% of the value of the improvements made to real property located at 2605 University Court in the CUF neighborhood of Cincinnati, in connection with the construction of a new sorority house at the University of Cincinnati, consisting of approximately 15,478 square feet of residential space, which construction shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total construction cost of approximately \$2,250,000.

BACKGROUND/CURRENT CONDITIONS

Zeta House Corporation of Delta Delta Delta (Tri-Delta) is relocating their sorority house from the corner of Straight Street and Clifton Avenue to a new site, a vacant lot at 2605 University Court in the CUF neighborhood. This new construction project supports the redevelopment of the former Deaconess Hospital where Trinitas will build a \$300 Million mixed-use development at Tri-Delta's current site. Tri-Delta submitted a Financial Assistance application for the construction of a new building at 2605 University Court. The application was received and reviewed by DCED.

DEVELOPER INFORMATION

Tri-Delta is a non-profit organization providing housing for university students. Tri-Delta owns and/or operates 60 facilities at colleges and universities across the United States. Their portfolio has invested approximately \$23 Million in the last four years and has an additional \$11 Million in property construction and/or expansion in planning and in progress.

PROJECT DESCRIPTION

The project is the construction of a \$2.2 Million new sorority house at the University of Cincinnati. Upon completion, this project will consist of 15,478 square feet of residential space, with three floors and a basement. The new house will accommodate 33 students during each academic school year. The house will also have a live in, on site director year-round and will provide dining and meeting space for 200 collegiate women. The building will be LEED Silver certified once completed.

The project is consistent with several of Plan Cincinnati's goals including the City's goal to remain competitive economically, and the City's goal to be good stewards of its resources-both built and environmental.

PROPOSED INCENTIVE

Pursuant to the Commercial CRA policy established by City Council, this project scored 13 points as indicated below which would merit a 14-year net 52% LEED-CRA Tax Exemption:

"But For" Analysis (0-3 points) *	3
LEED (0-6 points)	2
Neighborhood VTICA (1 point for contributions over 1% but less than 15% and 8 points for contributions of 15% or more)	8
TOTAL	13

* *"But For" Analysis Explanation:* 3 points were awarded for the following reasons:

- As the first component of the larger Trinitas development, the relocation is not economically feasible without the CRA. The CRA and relocation of the Tri Delta House will unlock Trinitas' \$300M development.

SUMMARY	
Forgone Public Benefit if Project Does not Proceed	
CPS PILOT (Forgone New Revenue)	(\$193,032)
VTICA (Forgone New Revenue)	(\$87,742)
Income Tax (Forgone New Revenue)	(\$9,240)
Total Public Benefit Lost	(\$290,014)
Incentive Value	
Annual Net Incentive to Developer	\$21,727
Total Term Incentive to Developer	\$304,171
City's Portion of Property Taxes Forgone	\$75,494
Public Benefit	

CPS PILOT	
Annual CPS Pilot	\$13,788
Total Term CPS PILOT	\$193,032
VTICA	
Annual VTICA	\$6,267
Total Term VTICA	\$87,742
Income Tax (Max)	\$9,240
Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$290,014
Total Public Benefit ROI*	\$0.95
City's ROI*	\$3.84

*If the project were going to happen regardless of incentive, this is the return of real dollars for public benefits as potential future dollars are forgone

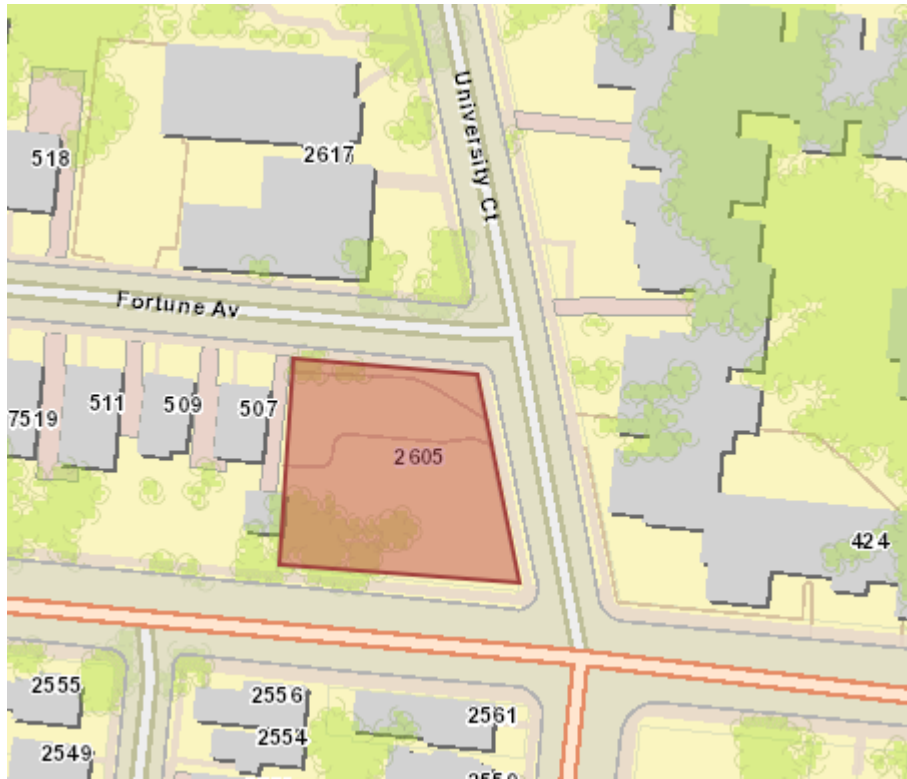
RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance. The emergency clause is necessary to allow for the land sale to take place and construction to commence within the month of October for completion of Construction prior to the 2021-2022 academic year.

Attachment: A. Property location and photographs

Copy: Markiea L. Carter, Interim Director, Department of Community & Economic Development *MLC*

Attachment A: Location and Photographs



Property Location



2605 University Court southeast view



2605 University Court northwest view

EMERGENCY

City of Cincinnati

SSB

BWB

An Ordinance No. _____ - 2020

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Zeta House Corporation of Delta Delta Delta, thereby authorizing a 14-year tax exemption for 100% of the value of improvements made to real property located at 2605 University Court in the CUF neighborhood of Cincinnati, in connection with the construction of a new sorority house at the University of Cincinnati, consisting of approximately 15,478 square feet of residential space, which construction shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total construction cost of approximately \$2,250,000.

WHEREAS, to encourage the development of real property and the acquisition of personal property, the Council of the City of Cincinnati by Ordinance No. 274-2017 passed on September 27, 2017, designated the area within the corporate boundaries of the City of Cincinnati as a "Community Reinvestment Area" pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute"); and

WHEREAS, Ordinance No. 275-2017 passed by this Council on September 27, 2017, as amended by Ordinance No. 339-2018, passed by this Council on October 31, 2018 (as amended, the "Commercial Policy Ordinance"), sets forth certain additional policies, conditions, and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; and

WHEREAS, to encourage the development of real property in a more environmentally-friendly manner, the Commercial Policy Ordinance incentivizes: (i) construction and remodeling to Leadership in Energy and Environmental Design ("LEED") standards (as defined by the U.S. Green Building Council); and (ii) construction and remodeling that obtains (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (collectively, "LBC" standards), all pursuant to the Statute; and

WHEREAS, effective October 23, 2017, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute; and

WHEREAS, Zeta House Corporation of Delta Delta Delta (the “Company”) desires to construct a new sorority house at the University of Cincinnati, consisting of approximately 15,478 square feet of residential space, including 33 residential units and dining and meeting space for 200 collegiate women on real property at 2605 University Court located within the corporate boundaries of the City of Cincinnati, to LEED or LBC standards (the “Improvements”), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

WHEREAS, to provide an appropriate development incentive for the Improvements, the City Manager has recommended a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)*, in substantially the form of Attachment A to this ordinance, to authorize a real property tax exemption for the Improvements in accordance with the Statute; and

WHEREAS, the property is located within the Cincinnati City School District of the City of Cincinnati; and

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

WHEREAS, pursuant to the Board of Education Agreement, the Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to 33% of the exempt real property taxes; and

WHEREAS, the Company has represented that it has entered into (or will enter into) a voluntary tax incentive contribution agreement with a third-party organization for amounts equal to 15% of the exempt real property taxes, which funds shall be committed by the third-party organization to facilitate permanent improvements and neighborhood services furthering redevelopment in the neighborhood of the Improvements and to support affordable housing on a City-wide basis; and

WHEREAS, the Improvements do not involve relocation of part or all of the Company’s operations from another county or municipal corporation in Ohio or, if there is relocation, notice has been given per Ohio Revised Code Section 3735.673; now, therefore,

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Zeta House Corporation of Delta Delta Delta (the “Agreement”), thereby authorizing a 14-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 2605 University Court in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the construction of a new sorority house at the University of Cincinnati, consisting of approximately 15,478 square feet of residential space, to be constructed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council) or Living Building Challenge standards (as described in the Agreement and as determined by the International Living Future Institute and the Cascadia Green Building Council, as applicable) at a total construction cost of approximately \$2,250,000.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and
- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District of the City of Cincinnati, in accordance with Ohio Revised Code Section 3735.672; and
- (iv) to take all necessary and proper actions to fulfill the City’s obligations under the Agreement.

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 allow the construction described in this ordinance and the corresponding

revitalization of the City of Cincinnati and the benefits to the City's economic welfare to begin at the earliest possible time.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

Attachment A to Ordinance

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

SEE ATTACHED

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and ZETA HOUSE CORPORATION OF DELTA DELTA DELTA, an Ohio nonprofit corporation (the "Company").

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.
- E. The Company is the sole owner of certain real property within the City, located at 2605 University Court, Cincinnati, Ohio 45219 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the construction of a building located on the Property to LEED Gold standards, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.
- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing four or more dwelling units, in order to be eligible for tax

exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.

- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. The Company acknowledges that the CUF neighborhood is a rising neighborhood in need of resources for development, neighborhood improvements, amenities, and organizations oriented towards neighborhood services. The Company anticipates that future development, improvements, amenities and organizations will contribute to the quality and vitality of the neighborhood, therefore increasing the value of the Property and directly and indirectly contributing to the Project's success. The Project's success, in turn, will benefit the neighborhood. Although this feedback effect will promote the revitalization and redevelopment of the City, it could also impact the affordability of property in the area. Therefore, in support of the CUF neighborhood and with the intention of preserving and improving the availability of quality, reliable affordable housing on a City-wide basis, as a material inducement to the City to enter into this Agreement, the Company hereby represents to the City that it will enter into a voluntary tax incentive contribution agreement ("VTICA") with a City-designated third-party non-profit

administrative organization (the "Third-Party Administrator") to contribute to the Third-Party Administrator an amount equal to 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"). Half of such VTICA Contribution is to be committed by the Third-Party Administrator to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the CUF neighborhood and the other half of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

- Q. This Agreement has been authorized by Ordinance No. _____-2020, passed by Cincinnati City Council on _____, 2020.
- R. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct a new sorority house to be occupied by the Company at the University of Cincinnati, consisting of approximately 15,478 square feet of residential space, including 33 residential units and dining and meeting space for 200 collegiate women on the Property (the "Improvements") at an estimated aggregate cost of \$2,250,000 to commence after the execution of this Agreement and to be completed no later than December 31, 2021; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code requirements and zoning regulations, as well as complying with LEED Gold standards. The Company hereby represents that it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Gold standards. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 14 years,

provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption, (D) compliance with LBC and/or LEED standards identified in Section 1, and (E) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the construction has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2021 nor extend beyond the earlier of (i) tax year 2034 or (ii) the end of the 14th year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements.

As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

(i) Including qualified SBEs on solicitation lists.

(ii) Assuring that SBEs are solicited whenever they are potential sources.

The Company 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, as applicable.

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

(iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as

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

to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 0 full-time permanent jobs and (ii) 8.5 full-time equivalent temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$0 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$440,000 of additional annual payroll prior to the completion of the Project with respect to the full-time equivalent temporary construction jobs.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any

successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an

agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

Zeta House Corporation of Delta Delta Delta
14951 North Dallas Parkway, Suite 500
Dallas, Texas 75254
Attention: [_____]

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

Remainder of this page intentionally left blank. Signature page follows.

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

CITY OF CINCINNATI,
an Ohio municipal corporation

ZETA HOUSE CORPORATION OF DELTA
DELTA DELTA,
an Ohio nonprofit corporation

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

By: _____

Printed Name: _____

Title: _____

Date: _____, 2020

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Property Address: 2605 University Court, Cincinnati, Ohio 45219
Auditor's Parcel No.: 098-0004-0180-00

Date: February 17, 2020
Description: The District at Clifton Heights
UC Tri-Delta ~ Consolidation
Location: City of Cincinnati
Hamilton County, Ohio



Situated in Section 20, Town 3, Fractional Range 2, Mill Creek Township, The City of Cincinnati, Hamilton County, Ohio and being all of parcel 11 of OH-UC Holdings II LLC as recorded in Official Record 13511, Page 1686 being all of Lots 1, 2 & 3 of Overlook Park Subdivision as recorded in Plat Book 22, Page 11 containing 0.2777 acres and further described as follows:

Begin at a found 5/8" iron pin capped "Kleingers Group" at the northwest intersection of the west right of way of University Court (50') and the north right of way of Straight Street (60'), said pin being the True Point of Beginning:

thence, from the True Point of Beginning, departing the west right of way of said University Court, and with the north right of way of said Straight Street, North 84° 22' 18" West, 127.29 feet to a found 5/8" iron pin capped "Kleingers Group" at the southeast corner of 507 Fortune, LLC as recorded in Official record 14071, Page 322;

thence, departing the north right of way of said Straight Street, and with the east line of said 507 Fortune, LLC, North 05° 37' 42" East, 110.00 feet to a found 5/8 iron pin with a damaged cap on the south right of way of Fortune Avenue (40');

thence, departing said 507 Fortune, LLC and with the south right of way of said Fortune Avenue, South 84° 22' 18" East, 92.61 feet to a found cross notch on the west right of way of said University Court;

thence, departing the south right of way of said Fortune Avenue and with the west right of way of said University Court South 11° 52' 18" East, 115.34 feet to the Point of Beginning containing 0.2777 acres of land.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from a Consolidation Plat made on February 17, 2020 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

Exhibit B to CRA Agreement

APPLICATION FOR TAX EXEMPTION

[TO BE ATTACHED TO EXECUTION VERSION]

Attachment A to Ordinance

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

SEE ATTACHED

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and ZETA HOUSE CORPORATION OF DELTA DELTA DELTA, an Ohio nonprofit corporation (the "Company").

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.
- E. The Company is the sole owner of certain real property within the City, located at 2605 University Court, Cincinnati, Ohio 45219 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the construction of a building located on the Property to LEED Gold standards, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.
- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing four or more dwelling units, in order to be eligible for tax

exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.

- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. The Company acknowledges that the CUF neighborhood is a rising neighborhood in need of resources for development, neighborhood improvements, amenities, and organizations oriented towards neighborhood services. The Company anticipates that future development, improvements, amenities and organizations will contribute to the quality and vitality of the neighborhood, therefore increasing the value of the Property and directly and indirectly contributing to the Project's success. The Project's success, in turn, will benefit the neighborhood. Although this feedback effect will promote the revitalization and redevelopment of the City, it could also impact the affordability of property in the area. Therefore, in support of the CUF neighborhood and with the intention of preserving and improving the availability of quality, reliable affordable housing on a City-wide basis, as a material inducement to the City to enter into this Agreement, the Company hereby represents to the City that it will enter into a voluntary tax incentive contribution agreement ("VTICA") with a City-designated third-party non-profit

administrative organization (the "Third-Party Administrator") to contribute to the Third-Party Administrator an amount equal to 15% of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"). Half of such VTICA Contribution is to be committed by the Third-Party Administrator to facilitate permanent improvements and neighborhood services furthering urban redevelopment in the CUF neighborhood and the other half of such VTICA Contribution is to be committed by the Third-Party Administrator in supporting quality affordable housing on a City-wide basis. The Company hereby represents and warrants that it will pay the VTICA Contribution for the full term of the abatement.

- Q. This Agreement has been authorized by Ordinance No. _____-2020, passed by Cincinnati City Council on _____, 2020.
- R. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to construct a new sorority house to be occupied by the Company at the University of Cincinnati, consisting of approximately 15,478 square feet of residential space, including 33 residential units and dining and meeting space for 200 collegiate women on the Property (the "Improvements") at an estimated aggregate cost of \$2,250,000 to commence after the execution of this Agreement and to be completed no later than December 31, 2021; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The construction shall be in compliance with applicable building code requirements and zoning regulations, as well as complying with LEED Gold standards. The Company hereby represents that it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Gold standards. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 14 years,

provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of construction, (B) the cost of construction, (C) the facts asserted in the application for exemption, (D) compliance with LBC and/or LEED standards identified in Section 1, and (E) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the construction has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2021 nor extend beyond the earlier of (i) tax year 2034 or (ii) the end of the 14th year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements.

As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources.
The Company 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, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.
- (v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as

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

to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 0 full-time permanent jobs and (ii) 8.5 full-time equivalent temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with construction, and in the case of the other jobs described herein, the job creation period shall begin upon completion of construction and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$0 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$440,000 of additional annual payroll prior to the completion of the Project with respect to the full-time equivalent temporary construction jobs.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. **Generally.** Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. **Prior Statutory Violations.** The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any

successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an

agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

Zeta House Corporation of Delta Delta Delta
14951 North Dallas Parkway, Suite 500
Dallas, Texas 75254
Attention: [_____]

If the Company sends a notice to the City alleging that the City is in default under this Agreement, the Company shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

Remainder of this page intentionally left blank. Signature page follows.

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

CITY OF CINCINNATI,
an Ohio municipal corporation

ZETA HOUSE CORPORATION OF DELTA
DELTA DELTA,
an Ohio nonprofit corporation

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

By: _____

Printed Name: _____

Title: _____

Date: _____, 2020

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Property Address: 2605 University Court, Cincinnati, Ohio 45219
Auditor's Parcel No.: 098-0004-0180-00

Date: February 17, 2020
Description: The District at Clifton Heights
UC Tri-Delta ~ Consolidation
Location: City of Cincinnati
Hamilton County, Ohio



Situated in Section 20, Town 3, Fractional Range 2, Mill Creek Township, The City of Cincinnati, Hamilton County, Ohio and being all of parcel 11 of OH-UC Holdings II LLC as recorded in Official Record 13511, Page 1686 being all of Lots 1, 2 & 3 of Overlook Park Subdivision as recorded in Plat Book 22, Page 11 containing 0.2777 acres and further described as follows:

Begin at a found 5/8" iron pin capped "Kleingers Group" at the northwest intersection of the west right of way of University Court (50') and the north right of way of Straight Street (60'), said pin being the True Point of Beginning:

thence, from the True Point of Beginning, departing the west right of way of said University Court, and with the north right of way of said Straight Street, North 84° 22' 18" West, 127.29 feet to a found 5/8" iron pin capped "Kleingers Group" at the southeast corner of 507 Fortune, LLC as recorded in Official record 14071, Page 322;

thence, departing the north right of way of said Straight Street, and with the east line of said 507 Fortune, LLC, North 05° 37' 42" East, 110.00 feet to a found 5/8 iron pin with a damaged cap on the south right of way of Fortune Avenue (40');

thence, departing said 507 Fortune, LLC and with the south right of way of said Fortune Avenue, South 84° 22' 18" East, 92.61 feet to a found cross notch on the west right of way of said University Court;

thence, departing the south right of way of said Fortune Avenue and with the west right of way of said University Court South 11° 52' 18" East, 115.34 feet to the Point of Beginning containing 0.2777 acres of land.

Basis of Bearings: NAD83(2011) Ohio State Plane Coordinates, South Zone (3402).

The above description was prepared from a Consolidation Plat made on February 17, 2020 under the direction of Jeffrey O. Lambert, Professional Surveyor #7568 in the State of Ohio.

Exhibit B to CRA Agreement

APPLICATION FOR TAX EXEMPTION

[TO BE ATTACHED TO EXECUTION VERSION]

September 28, 2020

To: Mayor and Members of City Council 202001691

From: Paula Boggs Muething, Interim City Manager

Subject: **LEED COMMUNITY REINVESTMENT AREA TAX EXEMPTION
AGREEMENT FOR 602 MAIN STREET LLC, LOCATED AT 602
MAIN STREET**

Attached is an Emergency Ordinance captioned as follows:

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with 602 Main Street, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 216 E. Sixth Street and 600-610 Main Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 168,883 square foot hotel with 163 rooms, and approximately 9,500 square feet of commercial space, which remodeling shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total remodeling cost of approximately \$53,718,163.

BACKGROUND/CURRENT CONDITIONS

602 Main Street, LLC is the current property owner of the Gwynne Building located at 602 Main Street in the Central Business District. This historic building is currently mostly vacant. 602 Main Street, LLC submitted a Financial Assistance application for the redevelopment project, which was received and reviewed by DCED.

DEVELOPER INFORMATION

602 Main Street LLC is a subsidiary of NuovoRE. NuovoRE has a track record of historic rehabilitation projects that provide meaningful community impact. Specifically, the developer is interested in completed catalytic developments that have ancillary benefits throughout the community. They have developed hotels projects in Maryland, California, Missouri, New York, Washington D.C., Utah,

Hawaii, South Carolina, and Mexico. Their past success demonstrates an ability to guide this project to completion.

PROJECT DESCRIPTION

Upon completion, this project will result in a 163-key, LEED Silver hotel and 9,500 square feet of commercial space, with a total project cost of about \$53,718,163. In connection with this project, it is estimated that 176 temporary construction jobs will be created at a total annual payroll of \$17,600,000 and 267 full-time equivalent employees will be created at a total annual payroll of \$10,000,000. This project is aligned with the Compete and Live initiatives of Plan Cincinnati.

PROPOSED INCENTIVE

The Ordinance provides for a 100% (net 52%), 15-year CRA tax exemption for this project. The exemption applies only to the increase in value attributable to the project improvements. Pursuant to the LEED CRA policy established by City Council, this project is eligible for a 15-year net 52% CRA Tax Abatement:

SUMMARY		
Forgone Public Benefit if Project Does not Proceed		
	CPS PILOT (Forgone New Revenue)	(\$4,937,770)
	VTICA (Forgone New Revenue)	(\$2,244,441)
	Income Tax (Forgone New Revenue)	(\$3,889,200)
	Total Public Benefit Lost	(\$11,071,411)
Incentive Value		
	Annual Net Incentive to Developer	\$518,715
	Total Term Incentive to Developer	\$7,780,729
	City's Portion of Property Taxes Forgone	\$1,931,134
Public Benefit		
	CPS PILOT	
	Annual CPS Pilot	\$329,185
	Total Term CPS PILOT	\$4,937,770
	VTICA	
	Annual VTICA	\$149,629
	Total Term VTICA	\$2,244,441
	Income Tax (Max)	\$3,889,200
	Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$11,071,411
	Total Public Benefit ROI*	\$1.42
	City's ROI*	\$5.73
*If the project were going to happen regardless of incentive, this is the return of real dollars for public benefits as potential future dollars are forgone		

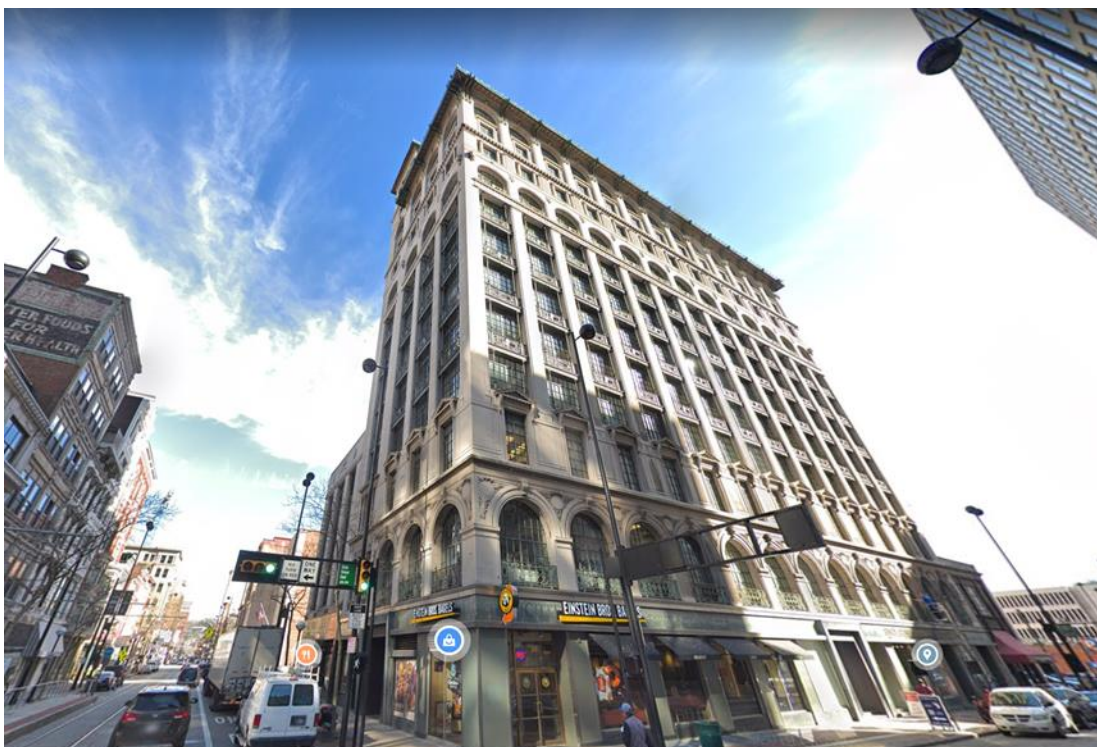
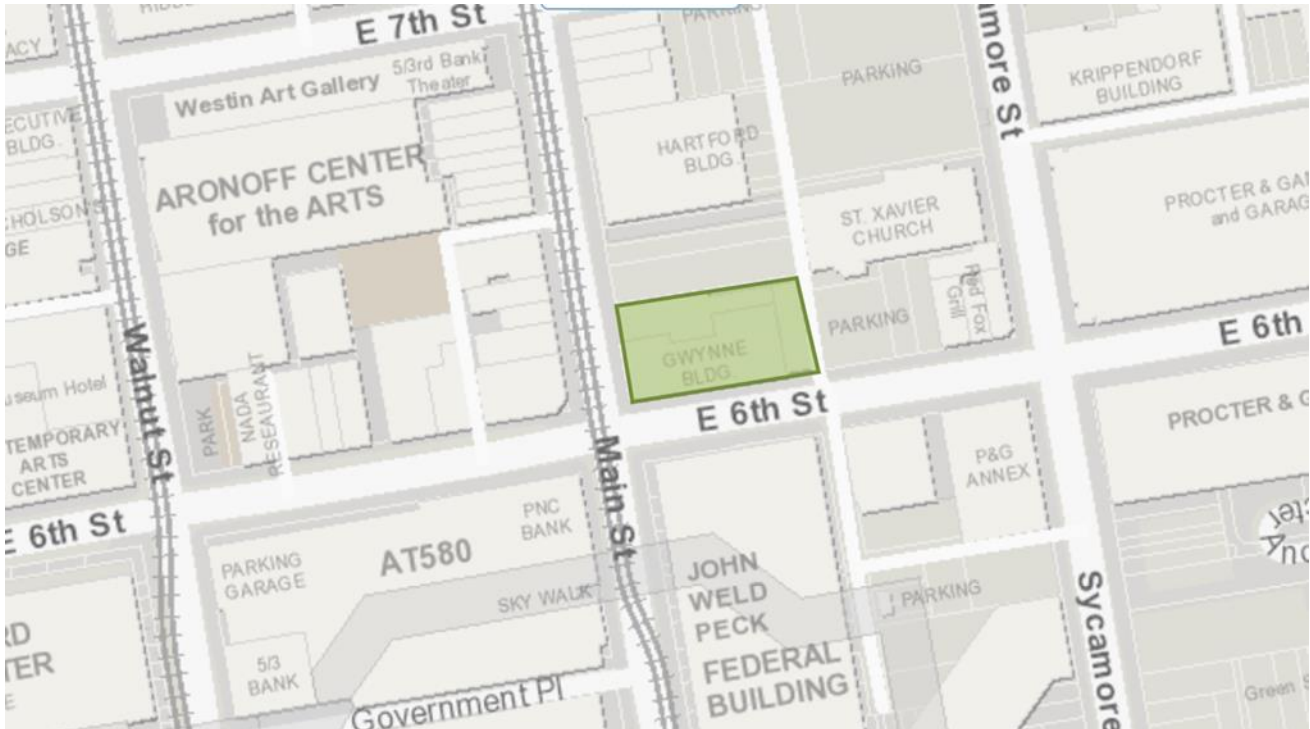
RECOMMENDATION

The Administration recommends approval of this Emergency Ordinance. This is an Emergency Ordinance to allow 602 Main Street LLC to complete their financing and start construction at the earliest possible time.

Attachment A: Property location and photographs

Copy: Markiea L. Carter, Interim Director, Department of Community & Economic Development *MLC*

Attachment A: Location and Photographs



EMERGENCY

City of Cincinnati

TJL

AWB

An Ordinance No. _____

- 2020

APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with 602 Main Street, LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 216 E. Sixth Street and 600-610 Main Street in the Central Business District of Cincinnati, in connection with the remodeling of an existing building into approximately 168,883 square foot hotel with 163 rooms, and approximately 9,500 square feet of commercial space, which remodeling shall be completed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards or Living Building Challenge standards, at a total remodeling cost of approximately \$53,718,163.

WHEREAS, to encourage the development of real property and the acquisition of personal property, the Council of the City of Cincinnati by Ordinance No. 274-2017 passed on September 27, 2017, designated the area within the corporate boundaries of the City of Cincinnati as a "Community Reinvestment Area" pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute"); and

WHEREAS, Ordinance No. 275-2017 passed by this Council on September 27, 2017, as amended by Ordinance No. 339-2018, passed by this Council on October 31, 2018 (as amended, the "Commercial Policy Ordinance"), sets forth certain additional policies, conditions, and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; and

WHEREAS, to encourage the development of real property in a more environmentally-friendly manner, the Commercial Policy Ordinance incentivizes: (i) construction and remodeling to Leadership in Energy and Environmental Design ("LEED") standards (as defined by the U.S. Green Building Council); and (ii) construction and remodeling that obtains (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (collectively, "LBC" standards), all pursuant to the Statute; and

WHEREAS, effective October 23, 2017, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute; and

WHEREAS, 602 Main Street, LLC (the "Company") desires to remodel an existing building located on real property at 216 E. Sixth Street and 600-610 Main Street located within the corporate boundaries of the City of Cincinnati into an approximately 168,883 square foot hotel

with 163 rooms, and approximately 9,500 square feet of commercial space consistent with LEED or LBC standards (the “Improvements”), provided that the appropriate development incentives are available to support the economic viability of the Improvements; and

WHEREAS, to provide an appropriate development incentive for the Improvements, the City Manager has recommended a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)*, in substantially the form of Attachment A to this ordinance, to authorize a real property tax exemption for the Improvements in accordance with the Statute; and

WHEREAS, the property is located within the Cincinnati City School District of the City of Cincinnati; and

WHEREAS, the Board of Education of the Cincinnati City School District (the “Board of Education”), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020 (as may be amended, the “Board of Education Agreement”), has approved exemptions of up to 100% of Community Reinvestment Area projects, waived advance notice and the right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects; and

WHEREAS, pursuant to the Board of Education Agreement, the Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to 33% of the exempt real property taxes; and

WHEREAS, the Company has represented that it has entered into (or will enter into) a voluntary tax incentive contribution agreement with a third-party organization for amounts equal to 15% of the exempt real property taxes, which funds shall be committed by the third-party organization to pay for streetcar operations that specially benefit the property; and

WHEREAS, the Improvements do not involve relocation of part or all of the Company’s operations from another county or municipal corporation in Ohio or, if there is relocation, notice has been given per Ohio Revised Code Section 3735.673; now, therefore,

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

Section 1. That Council approves a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with 602 Main Street, LLC (the “Agreement”), thereby authorizing a 15-year tax exemption for 100% of the assessed value of improvements to be made to real property located at 216 E. Sixth Street and 600-610 Main Street in Cincinnati, as calculated by the Hamilton County Auditor, in connection with the remodeling of an existing building into an approximately 168,883 square foot hotel with 163 rooms, and approximately

9,500 square feet of commercial space to be constructed in compliance with Leadership in Energy and Environmental Design Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council) or Living Building Challenge standards (as described in the Agreement and as determined by the International Living Future Institute and the Cascadia Green Building Council, as applicable), at a total remodeling cost of approximately \$53,718,163.

Section 2. That Council authorizes the City Manager:

- (i) to execute the Agreement on behalf of the City in substantially the form of Attachment A to this ordinance; and
- (ii) to forward on behalf of Council a copy of the Agreement, within fifteen (15) days after execution, to the Director of the Ohio Development Services Agency in accordance with Ohio Revised Code Section 3735.671(F); and
- (iii) to submit on behalf of Council annual reports on the Agreement to the Director of the Ohio Development Services Agency and to the Board of Education of the Cincinnati City School District of the City of Cincinnati, in accordance with Ohio Revised Code Section 3735.672; and
- (iv) to take all necessary and proper actions to fulfill the City's obligations under the Agreement.

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 allow the remodeling described in this ordinance and the corresponding revitalization of the City of Cincinnati and the benefits to the City's economic welfare to begin at the earliest possible time.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

This Community Reinvestment Area Tax Exemption Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and 602 MAIN STREET, LLC, a Delaware limited liability company (the "Company").

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the "Statute").
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director's determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018 (the "Commercial Policy Ordinance"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design ("LEED") Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the "Energy Petal" of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as "LBC" remodeling or construction), may qualify for a longer term and/or greater abatement.
- E. The Company is the sole owner of certain real property within the City, located at 216 E. Sixth Street and 600-610 Main Street, Cincinnati, Ohio 45202 (the "Property"), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the "Excluded Property"), and the Company acknowledges and agrees that the City's Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the remodeling of a building located on the Property to LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "Project"); provided that the appropriate development incentives are available to support the economic viability of the Project.

- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing four or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. City Council passed (i) Motion No. 201401368 on November 19, 2014, establishing a tax incentive policy that incentivizes each applicant for a real property tax abatement in the neighborhoods of Downtown and OTR to enter into a voluntary tax incentive contribution agreement with a third-party organization ("VTICA") for an amount equal to a percentage of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"), which funds shall be committed by a third-party organization to pay for streetcar operations that specially benefit the abated property, and (ii) Motion No. 201501592 on December 16, 2015, which established that the VTICA Contribution to be recognized by the Director of the Department of Community and Economic Development is 15% of the real property taxes that would have been payable on the abated property but for the

City-authorized tax abatement. The Commercial Policy Ordinance confirmed that such motions have not been superseded and remain the will of Council.

- Q. The Company acknowledges that Streetcar operations in the Central Business District and Over-the-Rhine will specially benefit the Project due to (a) the Streetcar's enhancement of public transit options in such neighborhoods and (b) the anticipated increase in property values attributable to public investment in Streetcar infrastructure.
- R. The Company represents and warrants to the City that the Company has entered or will enter into a VTICA and shall pay the VTICA Contribution each year for the full term of the abatement.
- S. This Agreement has been authorized by Ordinance No. _____-2020, passed by Cincinnati City Council on _____, 2020.
- T. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel the existing building on the Property into an approximately 168,883 square foot hotel with 163 rooms, and approximately 9,500 square feet of commercial space (the "Improvements") at an estimated aggregate cost of \$53,718,163 to commence after the execution of this Agreement and to be completed no later than August 31, 2022; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The **Error! Reference source not found.** shall be in compliance with applicable building code and zoning regulations, as well as complying with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council. The Company hereby represents that either or both of the following clauses (a) and (b) are true: (a) it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Silver, Gold or Platinum standards, or (b) it has registered with the International Living Future Institute and/or the Cascadia Green Building Council with intent to certify compliance with LBC standards. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 15 years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of **Error! Reference source not found.**, (B) the cost of **Error! Reference source not found.**, (C) the facts asserted in the application for exemption, (D) compliance with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, and (E) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2022 nor extend beyond the earlier of (i) tax year 2036 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due,

regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources. The Company 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, as applicable.
- (iii) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

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

(iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 267 full-time permanent jobs and (ii) 176 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling, and in the case of the other jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$10,000,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$17,600,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such

provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution in order to support streetcar operations. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred

Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

602 Main Street, LLC
Attention: Mike Everett
11711 Princeton Pike, Suite 341, #189
Cincinnati, Ohio 45246

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

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

Remainder of this page intentionally left blank. Signature page follows.

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

CITY OF CINCINNATI,
an Ohio municipal corporation

602 MAIN STREET, LLC,
a Delaware limited liability company

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

By: _____

Printed Name: _____

Title: _____

Date: _____, 2020

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Parcel #1

Situated in the City of Cincinnati, County of Hamilton, and State of Ohio:

And known as being a part of Inlot No. 97 on the original plan of said city, and being more particularly described as follows:

Beginning at a point in the Easterly line of Main Street, North 16 deg. 0' West, 58.50 feet from the Northeasterly corner of Sixth and Main street;

Thence North 16 deg. 0' West along the Easterly line of Main Street, 41.04 feet to the Southerly line of Registered Land Certificate No. 36703, land registration records of Hamilton County, Ohio;

Thence along the said Southerly line of registered land certificate North 74 deg. 03' 29" East a distance of 99.18 feet to the Westerly line of a lot of land conveyed by Cornelius Vanderbilt to the Procter and Gamble Company by deed recorded in Deed Book 1677, Page 650, Hamilton County, Ohio records;

Thence South 16 deg. 0' East along said Westerly line and parallel with Main Street 37.04 feet to the Northerly line of said Procter and Gamble Company's lot;

Thence South 73 deg. 57' 40" West along said Northerly line 28.53 feet;

Thence South 16 deg. 0' East parallel with main street 3.95 feet to a point in the center line of a 12 inch party wall and also in said Procter and Gamble Company's Northerly line;

Thence South 73 deg. 55' West along said center line of said 12 inch party wall 70.57 feet to the place of beginning. The dimensions are United States standard.

Together with any rights the grantor and/or his predecessors in title may have acquired by reason of encroachments, if any, of the building on the premises herein described upon the lot adjoining on the north as described in the Agreement recorded July 1, 1913 in Deed Book 1079, Page 567, of the Hamilton County Records.

Parcel Number: 079-0004-0003

Parcel #2

Situated in the City of Cincinnati, County of Hamilton and State of Ohio:

And known as being a part of Inlot No. 97 on the original plat of said City of Cincinnati and being more particularly described as follows:

Beginning at a point in the Northeasterly intersection of Sixth and Main Streets;

Thence North 16 deg. 00' West along the Easterly line of Main Street a distance of 58.50 feet;

Thence North 73 deg. 55' East along the center of a 12 inch party wall 70.57 feet;

Thence North 16 deg. 0' West parallel with the Easterly line of Main Street, 3.95 feet;

Thence North 73 deg. 57' 40" East 28.53 feet;

Thence North 16 deg. 00' West parallel with Easterly line of Main Street to the Southerly line of Registered Land Certificate No. 36703 land registration records of Hamilton County, Ohio thence along said Southerly line of registered land certificate North 73 deg. 57' 47" East a distance of 93.22 feet to the Westerly line of Leslie Alley formerly called Langdon Alley;

Thence South 16 deg. 15' East along said Westerly line of Leslie Alley a distance of 99.25 feet to the Northerly line of Sixth Street;

Thence South 74 deg. 00' West along said Northerly line of Sixth Street, a distance of 192.93 feet to the place of beginning. All measurements given in this description are United States standard.

Parcel Numbers: 079-0004-0001 and 0006

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

Community Reinvestment Area Tax Exemption Agreement
(LEED or Living Building Challenge)

This Community Reinvestment Area Tax Exemption Agreement (this “Agreement”) is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the “City”), and 602 MAIN STREET, LLC, a Delaware limited liability company (the “Company”).

Recitals:

- A. The City, through the adoption of Ordinance No. 274-2017 on September 27, 2017, designated the entire City of Cincinnati as a Community Reinvestment Area to encourage the development of real property and the acquisition of personal property in that area, pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 (the “Statute”).
- B. In accordance with the Statute, the Ohio Director of Development has forwarded to the City the Director’s determination dated October 23, 2017, stating that the findings contained in Ordinance No. 274-2017 are valid and that the entire City is a Community Reinvestment Area under the Statute. By such determination, the Director of Development of the State of Ohio determined that the area within the corporate boundaries of the City of Cincinnati contains the characteristics set forth in the Statute and confirmed such area as a Community Reinvestment Area under the Statute.
- C. The Council of the City of Cincinnati has also passed Ordinance No. 275-2017 as of September 27, 2017, as amended by Ordinance No. 339-2018 passed on October 31, 2018 (the “Commercial Policy Ordinance”), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. Pursuant to the Commercial Policy Ordinance, a project that is constructed or remodeled to (1) Leadership in Energy and Environmental Design (“LEED”) Silver, Gold or Platinum standards (as defined by the U.S. Green Building Council), or (2) receives a (a) Living Building Challenge Net Zero certification, (b) Living Building Challenge Full certification, or (c) solely in circumstances where the construction or remodeling complies with the requirements of the “Energy Petal” of the Living Building Challenge, Living Building Challenge Petal certification, in each case as defined by the International Living Future Institute and the Cascadia Green Building Council (such qualifying remodeling or construction is referred to, collectively, as “LBC” remodeling or construction), may qualify for a longer term and/or greater abatement.
- E. The Company is the sole owner of certain real property within the City, located at 216 E. Sixth Street and 600-610 Main Street, Cincinnati, Ohio 45202 (the “Property”), as further described in Exhibit A (Legal Description of Property) hereto. Notwithstanding the foregoing, the Property shall not include any residential condominiums being developed in connection with the Project (as defined below) (the “Excluded Property”), and the Company acknowledges and agrees that the City’s Community Reinvestment Area program entails separate applications by the owner of any residential condominium units included within the Project. For the avoidance of doubt, the Excluded Property shall not be exempt under this Agreement; however, this provision shall not be deemed to prohibit any owners from time to time of any Excluded Property from separately applying for a tax abatement in accordance with applicable law.
- F. The Company has proposed the remodeling of a building located on the Property to LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the “Project”); provided that the appropriate development incentives are available to support the economic viability of the Project.

- G. The Statute provides that if any part of a project is to be used for commercial or industrial purposes, including projects containing four or more dwelling units, in order to be eligible for tax exemption the City and the Company must enter into an agreement pursuant to Ohio Revised Code Section 3735.671 prior to commencement of construction or remodeling.
- H. The City, having appropriate authority under the Statute for this type of project, agrees (as provided herein and subject to all conditions herein) to provide the Company with the tax exemption incentives stated herein, available under the Statute, for development of the Project.
- I. The Company has submitted to the City an application for this tax exemption agreement (the "Application"), a copy of which is attached hereto as Exhibit B, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$1,250) made payable to the City and (ii) in accordance with Ohio Revised Code Section 3735.672(C), the state application fee of Seven Hundred Fifty Dollars (\$750) made payable to the Ohio Development Services Agency ("ODSA"), to be forwarded to the ODSA with an executed copy of this Agreement.
- J. The Director of the City's Department of Community and Economic Development has recommended approval of the Application on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City.
- K. The Board of Education of the Cincinnati City School District (the "Board of Education"), pursuant to that certain *Tax Incentive Agreement* effective as of April 28, 2020, has approved exemptions of up to one hundred percent (100%) of Community Reinvestment Area projects, waived advance notice and right to review such projects, and waived sharing or allocation of municipal income taxes in connection with such projects.
- L. The Company has entered into (or will enter into) an agreement with the Board of Education requiring the Company to pay the Board of Education amounts equal to thirty-three percent (33%) of the full amount of exempt real property taxes that would have been paid to Hamilton County if this Agreement were not in effect (the "Board of Education Agreement").
- M. The Company represents and warrants to the City that the Company and its major tenants, if any, do not intend to relocate part or all of their operations to the City from another county or municipal corporation in the State of Ohio (the "State").
- N. The Company represents that within the past five (5) years neither the Company, any related member of the Company, nor any entity to which the Company is a successor has discontinued operations at a project site in the State during the term of a property tax exemption agreement (under Ohio Revised Code Section 3735.671, 5709.62, 5709.63 or 5709.632) applicable to that site, and the Company acknowledges that misrepresentation hereunder will result in voiding of this Agreement.
- O. The Company represents and warrants to the City that the Company is not subject to an Enterprise Zone Agreement with the City of Cincinnati for the Property or the Project.
- P. City Council passed (i) Motion No. 201401368 on November 19, 2014, establishing a tax incentive policy that incentivizes each applicant for a real property tax abatement in the neighborhoods of Downtown and OTR to enter into a voluntary tax incentive contribution agreement with a third-party organization ("VTICA") for an amount equal to a percentage of the real property taxes that would have been payable on the abated property but for the City-authorized tax abatement (the "VTICA Contribution"), which funds shall be committed by a third-party organization to pay for streetcar operations that specially benefit the abated property, and (ii) Motion No. 201501592 on December 16, 2015, which established that the VTICA Contribution to be recognized by the Director of the Department of Community and Economic Development is 15% of the real property taxes that would have been payable on the abated property but for the

City-authorized tax abatement. The Commercial Policy Ordinance confirmed that such motions have not been superseded and remain the will of Council.

- Q. The Company acknowledges that Streetcar operations in the Central Business District and Over-the-Rhine will specially benefit the Project due to (a) the Streetcar's enhancement of public transit options in such neighborhoods and (b) the anticipated increase in property values attributable to public investment in Streetcar infrastructure.
- R. The Company represents and warrants to the City that the Company has entered or will enter into a VTICA and shall pay the VTICA Contribution each year for the full term of the abatement.
- S. This Agreement has been authorized by Ordinance No. _____-2020, passed by Cincinnati City Council on _____, 2020.
- T. In determining to recommend and authorize this Agreement, the Department of Community and Economic Development and City Council, respectively, have acted in material reliance on the Company's representations in the Application and herein regarding the Project including, but not limited to, representations relating to the number of jobs to be created and/or retained by the Company, the Board of Education Agreement, the VTICA Contribution, and the Project's effect in promoting the general welfare of the people of Cincinnati by, for example, encouraging the development of real property located in the Community Reinvestment Area and thereby promoting economic growth and vitality in Cincinnati.

NOW, THEREFORE, pursuant to Ohio Revised Code Section 3735.67(A) and in conformity with the format required under Ohio Revised Code Section 3735.671, in consideration of the mutual covenants contained herein and the benefit to be derived by the parties from the execution hereof, the parties agree as follows:

Section 1. Project. Upon issuance of the necessary zoning and building approvals, the Company agrees to remodel the existing building on the Property into an approximately 168,883 square foot hotel with 163 rooms, and approximately 9,500 square feet of commercial space (the "Improvements") at an estimated aggregate cost of \$53,718,163 to commence after the execution of this Agreement and to be completed no later than August 31, 2022; *provided*, however, that the Director of the Department of Community and Economic Development (the "Housing Officer") may, in his discretion, extend such deadline for a period of up to 12 months by written notice if, in the Director's judgment, the Company is proceeding in good faith towards completion. The **Error! Reference source not found.** shall be in compliance with applicable building code and zoning regulations, as well as complying with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council. The Company hereby represents that either or both of the following clauses (a) and (b) are true: (a) it has registered with the U.S. Green Building Council with intent to certify compliance with LEED Silver, Gold or Platinum standards, or (b) it has registered with the International Living Future Institute and/or the Cascadia Green Building Council with intent to certify compliance with LBC standards. In addition to the foregoing, (A) the Project shall comply with the Americans with Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, 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 the Company 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.

Section 2. Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of 100% of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of 15 years, provided that the Company shall have entered into the Board of Education Agreement. Within 120 days after completion of the Project (unless otherwise extended in writing by the City's Housing Officer), the Company must file the appropriate application for tax exemption with the City's Housing Officer. The Company is solely responsible to take this action. Upon receipt of the application for tax exemption, the City will proceed with the exemption authorized by this Agreement. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of **Error! Reference source not found.**, (B) the cost of **Error! Reference source not found.**, (C) the facts asserted in the application for exemption, (D) compliance with LBC standards or LEED Silver, Gold or Platinum standards, as defined by the U.S. Green Building Council, and (E) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after tax year 2022 nor extend beyond the earlier of (i) tax year 2036 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. Use; Maintenance; Inspections. The Company shall use the Property solely for the purposes described in Section 1 hereof and shall properly maintain and repair the Property throughout the period of tax exemption authorized herein. The Company authorizes the Housing Officer, or the Housing Officer's designees, to enter upon the Property as reasonably required to perform property inspections in accordance with Ohio Revised Code Section 3735.68.

Section 4. Compliance with Board of Education Agreement. As a condition of the tax exemption authorized under this Agreement, the Company agrees to enter into and comply with its obligation under the Board of Education Agreement.

Section 5. Duty of Company to Pay Taxes. As required by Ohio Revised Code Section 3735.671(C)(2), the Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions from taxation granted or authorized under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and continuing thereafter.

Section 6. Company Certifications Regarding Non-Delinquency of Tax Obligations. As required by Ohio Revised Code Section 3735.671(C)(3), the Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which the Company is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747 or 5753, or if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, has filed a petition in bankruptcy under 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

Section 7. Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Revised Code Section 9.66, (A) the Company affirmatively covenants that it does not owe: (i) any delinquent taxes to the State or to a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (iii) any other moneys to the State, a State agency or a political subdivision of the State that are past due,

regardless of whether the amounts owed are being contested in a court of law or not; (B) the Company authorizes the City and/or the State to inspect the personal financial statements of the Company, including tax records and other similar information not ordinarily open to public inspection; and (C) the Company authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this section may be prosecuted as a first degree misdemeanor under Ohio Revised Code Section 2921.13, may render the Company ineligible for any future economic development assistance from the State or any political subdivision of the State, and will result in the City requiring the Company's repayment of any assistance provided by the City in connection with the Project.

Section 8. City Cooperation. As required by Ohio Revised Code Section 3735.671(C)(4), upon specific request from the Company, the City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 9. Continuation of Exemptions. As provided in Ohio Revised Code Section 3735.671(C)(5), if for any reason the City revokes the designation of the City of Cincinnati as a Community Reinvestment Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation authorized pursuant to this Agreement.

Section 10. City Not Liable. The Company acknowledges that the exemption authorized in this Agreement is subject to approval and implementation by the appropriate state and/or county taxing authorities. The Company acknowledges that the City does not give any guarantee or assurance that the exemption approved in this Agreement will be so approved, and the Company agrees that in no event shall the Company seek to hold the City liable in any way in the event such exemption is not granted or implemented.

Section 11. Small Business Enterprise Program.¹

A. Compliance with Small Business Enterprise Program. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in Cincinnati Municipal Code ("CMC") Section 323-1-S, "SBEs"). Pursuant to CMC Section 323-11, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1-C4), supplies (as such term is defined in CMC Section 323-1-S5), services (as such term is defined in CMC Section 323-1-S) and professional services (as such term is defined in CMC Section 323-1-P2). Accordingly, the Company shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. The Company may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Company shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:

- (i) Including qualified SBEs on solicitation lists.
- (ii) Assuring that SBEs are solicited whenever they are potential sources.

The Company 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, as applicable.

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

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

(iv) If any subcontracts are to be let, the Company shall require the prime contractor (if different from the Company) to take the above affirmative steps.

(v) Prior to the commencement of work under any subcontracts, the Company shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. The Company shall update the report monthly.

(vi) The Company shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.

B. Remedies for Noncompliance with Small Business Enterprise Program. Failure of the Company or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of the Company to use its 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. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.

Section 12. Jobs. The Company represents that, as of the date of the execution of this Agreement, the Company has no existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. Jobs to be Created by Company. The Company agrees to use its best efforts to create (i) 267 full-time permanent jobs and (ii) 176 full-time temporary construction jobs at the Property in connection with the Project. In the case of the construction jobs, the job creation and retention period shall be concurrent with remodeling, and in the case of the other jobs described herein, the job creation period shall begin upon completion of remodeling and shall end three (3) years thereafter.

B. Company's Estimated Payroll Increase. The Company's increase in the number of employees will result in approximately (i) \$10,000,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$17,600,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. Community Reinvestment Area Employment. The Company shall (i) adopt hiring practices to ensure that at least twenty-five percent (25%) of the new employees shall be residents of the City of Cincinnati and (ii) give preference to residents of the City relative to residents of the State who do not reside in the City when hiring new employees under this Agreement.

D. Posting Available Employment Opportunities. To the extent allowable by law, the Company shall use its best efforts to post available employment opportunities within the Company's organization or the organization of any subcontractor working with the Company with the Ohio Means Jobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200.

Section 14. Equal Employment Opportunity. This Agreement is subject to the City's Equal Employment Opportunity Program contained in CMC Chapter 325. The Equal Employment Opportunity Clause in CMC Section 325-9 is incorporated by reference in this Agreement. The term "Company" is substituted for "Contractor" throughout CMC Section 325-9 in the context of this Agreement.

Section 15. Compliance with Immigration and Nationality Act. In the performance of its obligations under this Agreement, the Company agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such

provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

Section 16. Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement (Section 6 hereof) or the covenant of satisfaction of tax and other obligations (Section 7 hereof) is fraudulent, the City may terminate or modify the exemptions from taxation granted or authorized under this Agreement and may require the repayment by the Company of the amount of taxes that would have been payable had the Improvements not been exempted from taxation pursuant to this Agreement. A modification of exemption may be in the form of reduction in the number of years that eligible property is exempt and/or a reduction in the exemption percentage. The City shall provide written notice to the Company prior to finding the Company in default under this section. The notice shall provide the Company with not less than thirty (30) days to cure the default prior to City termination or modification of the exemptions under this Agreement. The City may extend the cure period as reasonably necessary under the circumstances. In the event of such termination or modification, the City is authorized to so notify the appropriate taxing authorities in order to effect the termination or modification. If repayment of previously exempt taxes is required by the City under this Section, such amount shall be paid as directed by the City within thirty (30) days of written demand. The City may secure repayment of such taxes by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Amounts due and not paid when due under this Section 16 shall bear interest at the rate specified in Ohio Revised Code Section 1343.03(A) (as in effect on the date of the City's payment demand).

Section 17. Annual Review and Report. As required by Ohio Revised Code Sections 3735.671(C)(7) and 5709.85, the Company shall provide to the City's Tax Incentive Review Council (or to the City Manager if so requested by the City) any information reasonably required by the Council or the City Manager to evaluate the Company's compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Council or City Manager. The performance of the Company's obligations stated in this Agreement shall be subject to annual review by the City's Tax Incentive Review Council (the "Annual Review and Report"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

Section 18. Revocation.

A. Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under Ohio Revised Code Section 3735.67. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the Company, the housing officer may revoke the exemption at any time after the first year of exemption. If the Company has materially failed to fulfill its obligations under this Agreement, or if the owner is determined to have violated division (E) of that section (see Section 18(B) of this Agreement), City Council, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or City Council shall notify the county auditor and the Company that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of Ohio Revised Code Section 3735.671, and the reason for revoking the exemption.

B. Prior Statutory Violations. The Company represents and warrants to the City that it is not prohibited by Ohio Revised Code Section 3735.671(E) from entering into this Agreement. As required by Ohio Revised Code Section 3735.671(C)(9), exemptions from taxation granted or authorized under this Agreement shall be revoked if it is determined that the Company, any successor to the Company or any related member (as those terms are defined in division (E) of Ohio Revised Code Section 3735.671) has violated the prohibition against entering into this Agreement under division (E) of Ohio Revised Code Section 3735.671 or under Ohio Revised Code Sections 5709.62 or 5709.63 prior to the time prescribed by that division or either of those sections.

Section 19. False Statements; Penalties; Material Representations.

A. Generally. As required in connection with Ohio Revised Code Section 9.66(C), the Company affirmatively covenants that it has made no false statements to the State or the City in the process of obtaining approval for this Agreement. If any representative of the Company has knowingly made a false statement to the State or the City to obtain approval for this Agreement, or if the Company fails to provide any information expressly required under the Application, the Company shall be required to immediately return all benefits received under this Agreement (by payment of the amount of taxes exempted hereunder, paid as directed by the City within thirty (30) days of written demand) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or any political subdivision of the State pursuant to Ohio Revised Code Section 9.66(C)(1). Amounts due and not paid under this Section 19 shall bear interest at the rate of twelve percent (12%) per year. Any person who provides a false statement to secure economic development assistance (as defined in Ohio Revised Code Section 9.66) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

B. Material Representations – Board of Education Agreement and VTICA. The Parties acknowledge and agree that a material failure by the Company to comply with its representations concerning the Board of Education Agreement or VTICA Contribution shall constitute an event of default for purposes of Section 16 (Default) and the basis for revocation under Section 18 (Revocation). Subject to the terms of the VTICA, if the VTICA is unenforceable for reasons of infeasibility or otherwise, the Company shall enter into alternative arrangements providing for the economic equivalent of the VTICA Contribution in order to support streetcar operations. Such arrangements may include, but are not limited to, providing for the economic equivalent of the VTICA Contribution through formation of a special improvement district. For purposes of this Section 19.B, alternative arrangements must result in services substantially similar to those that would have been supported through the VTICA and at a value that is the economic equivalent of the VTICA Contribution, which value shall not be required to exceed the VTICA Contribution amount that would have been payable by the Company. Any determination of infeasibility or mechanism for providing alternative arrangements is subject to approval by the City at its sole discretion. Nothing in this Section 19.B shall operate to limit the City's enforcement authority under this Agreement including, without limitation, Section 16, Section 18, and Section 19.A.

Section 20. Conflict of Interest. The Company covenants that, to the Company's knowledge, no employee of the City has any personal interest, direct or indirect, in any matters pertaining to the Project, and the Company agrees to take appropriate steps to prevent any employee of the City from obtaining any such interest throughout the term of this Agreement.

Section 21. Annual Fee. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars (\$500) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred

Dollars (\$2,500) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. Discontinued Operations. As provided in Ohio Revised Code Section 3735.671(E), if, prior to the expiration of the term of this Agreement, the Company discontinues operations at the Project so that the Property is no longer being used for the purposes described in Section 1 hereof, then the Company, its successors, and any related member shall not enter into an agreement under Ohio Revised Code Sections 3735.671, 5709.62, 5709.63 or 5709.632, and no legislative authority shall enter into such an agreement with the Company, its successors or any related member prior to the expiration of five (5) years after the discontinuation of operations. As used in this Section 22, "successors" and "related member" shall have the meanings set forth in Ohio Revised Code Section 3735.671(E).

Section 23. Notices. Unless otherwise specified herein, each party shall address written notices, demands and communications in connection with this Agreement to the other party as follows (or to such other address as is communicated in accordance with this Section):

To the City:

City of Cincinnati
Attention: Director of the Department of Community and Economic Development
Centennial Plaza Two, Suite 700
805 Central Avenue
Cincinnati, Ohio 45202

To the Company:

602 Main Street, LLC
Attention: Mike Everett
11711 Princeton Pike, Suite 341, #189
Cincinnati, Ohio 45246

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

Section 24. Acknowledgment of City Participation. The Company agrees to acknowledge the support of the City on construction signs, project and exhibition signage, and any publicity such as that appearing on the internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a Project partner, the Company shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City.

Section 25. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the City and the Company with respect to the subject matter herein, superseding any prior or contemporaneous agreement with respect thereto.

Section 26. Governing Law. This Agreement is entered into and is to be performed in the State. The City and the Company agree that the law of the State of Ohio shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

Section 27. Waiver. The City's waiver of any breach by the Company of any provision of this Agreement shall not constitute or operate as a waiver by the City of any other breach of such provision or of any other provisions, nor shall any failure or delay by the City to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 28. Severability. This Agreement shall be severable; if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

Section 29. Amendment. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. Non-Assignment. As required by Ohio Revised Code Section 3735.671(C)(8), this Agreement is not transferable or assignable by the Company without the express written approval of the City Manager of the City. If the Company has entered into a Board of Education Agreement or VTICA in connection with the Property, the City shall not approve the assignment of this Agreement unless the assignee has assumed the Company's remaining obligations under the Board of Education Agreement and VTICA, as applicable. Failure to assign or otherwise perform the Company's obligations under the Board of Education Agreement or VTICA upon transfer of the Property during the term of the tax abatement authorized by this Agreement shall be basis for revocation of the tax exemption under Section 18.

Section 31. Recording. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. Legislative Action Required. As provided in Ohio Revised Code Section 3735.671(C)(10), the Company and the City acknowledge that this Agreement must be approved by formal action of the City Council of the City as a condition for this Agreement to take effect. Notwithstanding anything to the contrary herein, this Agreement shall take effect after the later of the date of such approval or the final date of execution of this Agreement by all parties.

Section 33. Additional Representations and Warranties of Company. The Company represents and warrants that (a) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder; (b) no notices to, or consents, authorizations or approvals of, any person are required (other than any already given or obtained) for its due execution, delivery and performance of this Agreement; and (c) this Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Company.

Section 34. Certification as to Non-Debarment. The Company represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, the Company shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If the Company or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, the company shall be considered in default under this Agreement.

Section 35. Appeals. Pursuant to Ohio Revised Code Section 3735.70, a person aggrieved under the Statute or this Agreement may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Section 36. 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.

Section 37. Legal Requirements. In completing and operating the Project, the Company 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.

Section 38. Counterparts and Electronic Signatures. This Agreement may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

Remainder of this page intentionally left blank. Signature page follows.

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

CITY OF CINCINNATI,
an Ohio municipal corporation

602 MAIN STREET, LLC,
a Delaware limited liability company

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

By: _____

Printed Name: _____

Title: _____

Date: _____, 2020

Authorized by resolution dated _____

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

Exhibit A to CRA Agreement

LEGAL DESCRIPTION OF PROPERTY

Parcel #1

Situated in the City of Cincinnati, County of Hamilton, and State of Ohio:

And known as being a part of Inlot No. 97 on the original plan of said city, and being more particularly described as follows:

Beginning at a point in the Easterly line of Main Street, North 16 deg. 0' West, 58.50 feet from the Northeasterly corner of Sixth and Main street;

Thence North 16 deg. 0' West along the Easterly line of Main Street, 41.04 feet to the Southerly line of Registered Land Certificate No. 36703, land registration records of Hamilton County, Ohio;

Thence along the said Southerly line of registered land certificate North 74 deg. 03' 29" East a distance of 99.18 feet to the Westerly line of a lot of land conveyed by Cornelius Vanderbilt to the Procter and Gamble Company by deed recorded in Deed Book 1677, Page 650, Hamilton County, Ohio records;

Thence South 16 deg. 0' East along said Westerly line and parallel with Main Street 37.04 feet to the Northerly line of said Procter and Gamble Company's lot;

Thence South 73 deg. 57' 40" West along said Northerly line 28.53 feet;

Thence South 16 deg. 0' East parallel with main street 3.95 feet to a point in the center line of a 12 inch party wall and also in said Procter and Gamble Company's Northerly line;

Thence South 73 deg. 55' West along said center line of said 12 inch party wall 70.57 feet to the place of beginning. The dimensions are United States standard.

Together with any rights the grantor and/or his predecessors in title may have acquired by reason of encroachments, if any, of the building on the premises herein described upon the lot adjoining on the north as described in the Agreement recorded July 1, 1913 in Deed Book 1079, Page 567, of the Hamilton County Records.

Parcel Number: 079-0004-0003

Parcel #2

Situated in the City of Cincinnati, County of Hamilton and State of Ohio:

And known as being a part of Inlot No. 97 on the original plat of said City of Cincinnati and being more particularly described as follows:

Beginning at a point in the Northeasterly intersection of Sixth and Main Streets;

Thence North 16 deg. 00' West along the Easterly line of Main Street a distance of 58.50 feet;

Thence North 73 deg. 55' East along the center of a 12 inch party wall 70.57 feet;

Thence North 16 deg. 0' West parallel with the Easterly line of Main Street, 3.95 feet;

Thence North 73 deg. 57' 40" East 28.53 feet;

Thence North 16 deg. 00' West parallel with Easterly line of Main Street to the Southerly line of Registered Land Certificate No. 36703 land registration records of Hamilton County, Ohio thence along said Southerly line of registered land certificate North 73 deg. 57' 47" East a distance of 93.22 feet to the Westerly line of Leslie Alley formerly called Langdon Alley;

Thence South 16 deg. 15' East along said Westerly line of Leslie Alley a distance of 99.25 feet to the Northerly line of Sixth Street;

Thence South 74 deg. 00' West along said Northerly line of Sixth Street, a distance of 192.93 feet to the place of beginning. All measurements given in this description are United States standard.

Parcel Numbers: 079-0004-0001 and 0006

Exhibit B to CRA Agreement
APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

202001695

Date: September 25, 2020

To: Councilmember Greg Landsman
From: Andrew W. Garth, Interim City Solicitor *AWG*
Subject: Emergency Ordinance –Transfers and Appropriations FY 2020
Closeout

Transmitted herewith is an emergency ordinance captioned as follows:

AUTHORIZING the transfer of \$150,000 from the General Fund balance sheet reserve account no. 050x2580, "Reserve for Weather Related Events, Other Emergency and One-Time Needs," to the unappropriated surplus of General Fund 050; **AUTHORIZING** the transfer of \$150,000 from the unappropriated surplus of General Fund 050 to the Department of Community and Economic Development's General Fund non-personnel operating budget account no. 050x161x7200 for the purpose of providing for contractual services to conduct an analysis necessary to implement a tiered residential tax abatement program; and **AUTHORIZING** the designation of \$250,000 of the \$1,000,000 included in the Approved FY 2021 Budget Update for the Community Safety Response Program be designated for the Women Helping Women's Domestic Violence Enhanced Response Team (DVERT) program.

AWG/CMZ/(lnk)
Attachment
320951

EMERGENCY

City of Cincinnati

CMZ

AWB

An Ordinance No. _____

- 2020

AUTHORIZING the transfer of \$150,000 from the General Fund balance sheet reserve account no. 050x2580, "Reserve for Weather Related Events, Other Emergency and One-Time Needs," to the unappropriated surplus of General Fund 050; **AUTHORIZING** the transfer of \$150,000 from the unappropriated surplus of General Fund 050 to the Department of Community and Economic Development's General Fund non-personnel operating budget account no. 050x161x7200 for the purpose of providing for contractual services to conduct an analysis necessary to implement a tiered residential tax abatement program; and **AUTHORIZING** the designation of \$250,000 of the \$1,000,000 included in the Approved FY 2021 Budget Update for the Community Safety Response Program be designated for the Women Helping Women's Domestic Violence Enhanced Response Team (DVERT) program.

WHEREAS, the research and design of a tiered residential tax abatement program would continue to encourage residential development in neighborhoods that are already experiencing growth by further incentivizing residential development in neighborhoods that have lacked similar investment and strengthening the incentive for rehabilitation of existing residential properties in high-investment neighborhoods, thus relieving the unintended economic pressure to tear down and build new versus rehabilitate when appropriate; and

WHEREAS, Council wishes to authorize an appropriation to the Department of Community and Economic Development in the amount of \$150,000 to provide funding for contractual services to conduct an analysis necessary to implement a tiered residential tax abatement program; and

WHEREAS, Women Helping Women (WHW) and the Cincinnati Police Department currently have a partnership by which the Domestic Violence Enhanced Response Team (DVERT) provides advocates who are trauma informed experts to meet officers on scene to support a survivor of domestic violence; and

WHEREAS, these experts use their training to assist survivors by giving them support, resources, vouchers, legal assistance, and options for how to keep themselves and their family safe; and

WHEREAS, due to the fundraising interruption as a result of the COVID-19 pandemic, WHW's DVERT program has a funding gap of \$250,000 needed to sustain this innovative program and increase the number of survivors served by more than 20 percent by providing support to an additional 200 adults and 400 children experiencing trauma; and

WHEREAS, across the city, there has been a spike in domestic violence, with WHW seeing a 53% increase of calls into their crisis hotline; and

WHEREAS, Council wishes to designate \$250,000 of the \$1,000,000 included in the City Manager's Office Approved FY 2021 Operating Budget Update for the Community Safety Response Program for the WHW's DVERT program; now, therefore,

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

Section 1. That Council hereby authorizes the transfer of the sum of \$150,000 from the General Fund balance sheet reserve account no. 050x2580, "Reserve for Weather Related Events, Other Emergency and One-Time Needs," to the unappropriated surplus of General Fund 050.

Section 2. That the sum of \$150,000 is hereby appropriated from the unappropriated surplus of General Fund 050 to the Department of Community and Economic Development's General Fund non-personnel operating budget account no. 050x161x7200 for the purpose of providing for contractual services to conduct an analysis necessary to implement a tiered residential tax abatement program.

Section 3. That Council hereby designates \$250,000 of the \$1,000,000 included in the Approved FY 2021 Budget Update for the Community Safety Response Program be designated for the Women Helping Women's Domestic Violence Enhanced Response Team (DVERT) program.

Section 4. That the appropriate City officers are hereby authorized to do all things necessary and proper to implement the provisions of Sections 1 through 3 herein.

Section 5. 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 accomplish the authorized transfers and appropriations so that the funding

described herein is in place immediately and so that the necessary expenditures described herein may be made as soon as possible.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

202001696

Date: September 25, 2020

To: Mayor John Cranley
From: Andrew W. Garth, Interim City Solicitor *AWG*
Subject: **Emergency Ordinance – 3CDC Findlay Park Recreation Improvements**

Transmitted herewith is an emergency ordinance captioned as follows:

ESTABLISHING new capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," for the purpose of partnering with Cincinnati Center City Development Corporation ("3CDC") to provide resources for the design and construction of new state-of-the-art recreation improvements in and around Findlay Park in the Over-The-Rhine neighborhood; **AUTHORIZING** the transfer and appropriation of the sum of \$50,000 from the unappropriated surplus of Downtown/OTR West Equivalent Fund 482 ("Downtown/OTR West TIF District") to newly created capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," for the purpose of providing resources for the design and construction of such recreation improvements; **AUTHORIZING** the City Manager to accept in-kind donations from 3CDC by providing design, community engagement, and development services to complete the "Findlay Park Recreation Improvements" valued at \$50,000; and **DECLARING** expenditures from capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," to be for a public purpose.

AWG/CMZ/(lnk)
Attachment
320950

EMERGENCY

City of Cincinnati

CMZ

BWB

An Ordinance No. _____

- 2020

ESTABLISHING new capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," for the purpose of partnering with Cincinnati Center City Development Corporation ("3CDC") to provide resources for the design and construction of new state-of-the-art recreation improvements in and around Findlay Park in the Over-The-Rhine neighborhood; **AUTHORIZING** the transfer and appropriation of the sum of \$50,000 from the unappropriated surplus of Downtown/OTR West Equivalent Fund 482 ("Downtown/OTR West TIF District") to newly created capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," for the purpose of providing resources for the design and construction of such recreation improvements; **AUTHORIZING** the City Manager to accept in-kind donations from 3CDC by providing design, community engagement, and development services to complete the "Findlay Park Recreation Improvements" valued at \$50,000; and **DECLARING** expenditures from capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," to be for a public purpose.

WHEREAS, the Cincinnati Recreation Commission Findlay and Grant Parks Community Engagement Summary Report, dated August 2019, identified the need for additional recreational improvements in and around Findlay Park (the "Recreation Improvements") to serve Over-The-Rhine and the community; and

WHEREAS, due to the extensive nature of the Recreation Improvements envisioned and the likely complex financing required to complete such improvements, the City will need to engage an experienced development manager to provide design, community engagement, and development services to complete the Recreation Improvements; and

WHEREAS, Cincinnati Center City Development Corporation ("3CDC") is uniquely qualified to act as the development manager for the Recreation Improvements due to its successful experiences designing, planning, and completing redevelopment of public spaces throughout the Central Business District and Over-The-Rhine, including the successful redevelopment of Fountain Square, Washington Park, and Zeigler Park; and

WHEREAS, an estimated \$100,000 is needed to complete the design phase for the Recreation Improvements; and

WHEREAS, 3CDC has agreed to match a City contribution of \$50,000 with an in-kind contribution in order to fully fund the necessary design work; and

WHEREAS, the Recreation Improvements constitute a "Public Infrastructure Improvement" as defined in Section 5709.40(A)(8) of the Ohio Revised Code; and

WHEREAS, Council, by Ordinance No. 413-2002 passed on December 18, 2002, created the District 3-Downtown/OTR West TIF District Incentive District (the "District") to, in part, fund the construction of public infrastructure improvements that benefit or serve the District, and resources totaling \$50,000 are currently available from the District to fund the City's portion of the design phase; now, therefore,

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

Section 1. That Cincinnati Center City Development Corporation ("3CDC") is hereby designated as development manager to oversee design and development of recreation improvements in and around Findlay Park due to its unique and demonstrated experience successfully designing, planning, and completing large-scale redevelopment of public spaces in the Over-The-Rhine neighborhood and the Central Business District.

Section 2. That the Director of Finance is authorized to establish new capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," for the purpose of providing resources for the cost of completing design work for redevelopment of recreation improvements in and around Findlay Park or for other related hard or soft costs associated with such redevelopment (the "Recreation Improvements").

Section 3. That the transfer and appropriation of \$50,000 from Downtown/OTR West Equivalent Fund 482 to capital improvement program project account no. 980x101x211033, "Findlay Park Recreation Improvements," is hereby authorized for the purpose of providing resources for the costs of completing design work for redevelopment of the Recreation Improvements, as allowable by Ohio law.

Section 4. That Council hereby declares that the Recreation Improvements constitute a "Public Infrastructure Improvement" (as defined by Section 5709.40(A)(8) of the Ohio Revised Code ("ORC")), that will benefit and/or serve the District 3-Downtown/OTR West TIF District

Incentive District, subject to compliance with ORC Sections 5709.40 through 5709.43, because the Recreation Improvements will create recreational amenities for the surrounding area.

Section 5. That the City Manager is hereby authorized to accept in-kind donations from 3CDC by providing design, community engagement, and development services valued at \$50,000 that are necessary to complete the Recreation Improvements.

Section 6. That Council hereby declares that the expenditure of the herein-appropriated funds to provide resources for the Recreation Improvements (i) serves a public purpose because the project will increase neighborhood vitality, and (ii) that the Recreation Improvements are anticipated to have an estimated life or estimated period of usefulness of five years or more.

Section 7. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the provisions of this ordinance including, without limitation, entering into a development manager agreement with 3CDC consistent with this ordinance.

Section 8. 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 commence the design of the Recreation Improvements so that community outreach, design, and construction may occur as quickly as possible.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk