# CALENDAR

# **Cincinnati City Council**

Wednesday, March 24, 2021	2:00 PM	Council Chambers, Room 300
•		

#### **ROLL CALL**

#### PRAYER AND PLEDGE OF ALLEGIANCE

#### FILING OF THE JOURNAL

### MR. GOODIN

1. <u>202101209</u> MOTION, submitted by Councilmember Goodin, While Cincinnati continues to grapple with long-term, systemic fixes to its affordable housing shortage, it has become apparent that the location of such units remains an issue for many homeowners. A concentration of subsidized units in one neighborhood can artificially lower property values and deter market-rate and commercial development. Accordingly, **WE MOVE** that the Administration advise as to whether Council may limit the development of new subsidized housing units in neighborhoods which already contain 50 percent of more of such units in their existing housing stock.

Recommendation ECONOMIC GROWTH AND ZONING COMMITTEE

<u>Sponsors:</u> Goodin

2. <u>202101215</u> **RESOLUTION**, submitted by Councilmember Goodin, **CONDEMNING** hate crimes and discriminatory rhetoric directed against Asian-American and Pacific Islander communities at all times, but especially in light of the skyrocketing number of incidents since the advent of the COVID-19 pandemic.

Recommendation PASS

<u>Sponsors:</u> Goodin

### MR. GOODIN

#### MR. SMITHERMAN

3. 202101181 MOTION, submitted by Councilmember Goodin and Vice Mayor Smitherman, The Cincinnati Police Department (CPD) recently reported that its complement of uniformed officers stands below 1,000 for the first time in decade as a result of retirements and attrition. This reduction in force comes at a time when Cincinnati neighborhoods have been faced with a record number of murders, as well as an increase in property and quality of life offenses as a result of the COVID-19 pandemic. Additionally, the community continues to seek thoughtful engagement between the Cincinnati Police Department and mental health and addiction service providers to, when appropriate, divert potential criminal defendants into treatment. Accordingly, WE MOVE that a portion of Cincinnati's American Rescue Plan appropriation be committed to: 1) immediately fund a new CPD recruit class in 2021 to better facilitate community policing and criminal investigations; 2) fund additional training and police personnel for CPD's Mental Health Response Team (MHRT); 3) fund training to better integrate the MHRT with existing mental health and substance abuse providers and to create a mechanism to track those citizens who are referred to such providers; 4) to fund the local chapter of the Saving Our Kings and Queens youth intervention program headed by Mitch Morris; 5) to fund Rev. Peterson Mingo's Southern Christian Leadership Program's Rites of Passage initiative, which includes a summer camp, anti-gang and anti-drug education and numerous youth sports programs in Evanston; and 6) to once again fully fund Hope Dudley's UCanSpeakForMe homicide victim's family assistance program.

Recommendation BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> Goodin and Smitherman

### MR. SMITHERMAN

# MR. GOODIN

### MR. MANN

4. 202101186 MOTION, submitted by Vice Mayor Smitherman, Councilmember Goodin and Mann, WE MOVE that the first funds from the American Rescue Plan Act be used to meet our reserve target goal of 16.7%, or two months of our prior year's revenue. WE FURTHER MOVE that these funds be used to close the projected budget deficits for fiscal years 2022 and 2023. WE FURTHER MOVE that the City of Cincinnati make whole any other city funds that were impacted by Covid-19. (STATEMENT ATTACHED).

<u>Recommendation BUDGET AND FINANCE COMMITTEE</u>

<u>Sponsors:</u> Smitherman, Goodin and Mann

# MR. SMITHERMAN

# MR. GOODIN

# **MS. KEARNEY**

 <u>202101187</u> MOTION, submitted by Vice Mayor Smitherman and Councilmember Goodin and Kearney, WE MOVE that funds from the American Rescue Plan Act be allocated to address staffing shortages identified by department heads and recommended by the administration. (STATEMENT ATTACHED).

Recommendation BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> Smitherman, Goodin and Kearney

# **MS. SUNDERMANN**

6. <u>202101175</u> **MOTION**, submitted by Councilmember Sundermann, **WE MOVE** that the City Administration include in the FY22 budget a sufficient portion from the anticipated funds that Cincinnati is to receive through the American Rescue

Plan in order to complete any funding needs for the construction of the Western Hills Viaduct. (STATEMENT ATTACHED)

Recommendation BUDGET AND FINANCE COMMITTEE

Sundermann

7. 202101185 **MOTION**, submitted by Councilmember Sundermann, **WE MOVE** that the City Administration include in the FY22 budget \$1,400,000 for an additional class of 43 police recruits to ensure that the Cincinnati Police Department can adequately keep up with attrition. The sources of city revenue should first be a COPS Hiring grant and then any additional needed funds from the anticipated \$291,590,000 that Cincinnati is to receive from the recently passed federal law, American Rescue Plan. (STATEMENT ATTACHED).

**Recommendation BUDGET AND FINANCE COMMITTEE** 

Sponsors: Sundermann

### CITY MANAGER

<u>202101178</u>
 **REPORT**, dated 3/24/2021 submitted by Paula Boggs Muething, City Manager, on a communication from the State of Ohio, Division of Liquor Control, advising of a permit application for FARE U LLC, DBA FIRESIDE PIZZA, 773 E. McMillan Street, Cincinnati, Ohio 45206. (#2638513, D5J, D6, TRANSFER) [Objections: NONE]

Recommendation FILE

<u>Sponsors:</u> City Manager

**9.** <u>202101179</u> **REPORT**, dated 3/24/2021 submitted by Paula Boggs Muething, City Manager, on a communication from the State of Ohio, Division of Liquor Control, advising of a permit application for NEPHEWS LLC, 7532 Reading Road, Cincinnati, Ohio 45237. (#6353350, D1, NEW) [Objections: YES]

#### Recommendation FILE

<u>Sponsors:</u> City Manager

**10.** <u>202101183</u> **ORDINANCE** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **AUTHORIZING** the City Manager to apply for, accept and appropriate a grant in the amount of \$303,230 from the Get Vaccinated OHIO Public Health Initiative, funded by the Ohio Department of Health, to support activities that will increase immunization rates in children under two years of age, school aged children and adolescents; and AUTHORIZING the Director of Finance to deposit the grant funds into Public Health Research Fund 350.

<u>Recommendation</u> BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> City Manager

**11.** <u>202101184</u> **ORDINANCE** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **AUTHORIZING** the City Manager to accept and appropriate grant resources in the amount of \$20,000 from the Delta Dental Foundation's COVID-19 Dental Equipment Fund, to provide funds for the Cincinnati Health Department's purchase of COVID-19 related dental supplies and equipment, including personal protective equipment ("PPE"), air purifiers, teledentistry equipment, and other necessary resources; and AUTHORIZING the Director of Finance to receive and deposit the grant funds into Public Health Research

#### Fund 350.

<u>Recommendation</u> BUDGET AND FINANCE COMMITTEE

Sponsors: City Manager

**12.** 202101188 **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **AUTHORIZING** the transfer of the sum of \$60,850 within the General Fund from and to various operating budget accounts for the purpose of providing funds for the ongoing needs of City departments in accordance with the attached Schedule of Transfer; AUTHORIZING the transfer of the sum of \$1,744,743 within the Restricted Funds from and to various operating accounts for the purpose of providing funds for the purpose of providing funds for the ongoing needs of City departments in accordance with the attached Schedule of Transfer; and AUTHORIZING the appropriation of \$300,000 from the unappropriated surplus of 9-1-1 Cell Phone Fees Fund 364 for the purpose of realigning and providing funds for the ongoing needs of City departments in accordance with the attached Schedule of Transfer.

Recommendation BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> City Manager

**13.** <u>202101190</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **ESTABLISHING** new capital improvement program project no. 980x199x211921, "Riverside Boat Ramp Improvements"; and AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in an amount of up to \$200,000 from the Ohio Department of Natural Resources Waterways Safety Fund for the purpose of providing funding for the design and construction of the improved boat ramp, boat dock, and restrooms at the Riverside boat ramp.

Recommendation BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> City Manager

**14.** <u>202101191</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **DETERMINING** to proceed with improving Walworth Avenue in the East End neighborhood of Cincinnati by constructing an extension thereto, together with curbs, street lighting, streetscaping, sidewalks, water mains, and storm and sanitary sewer; necessary remediation of soil in the related right-of-way; installing retaining walls; acquiring land necessary to construct and install the foregoing; and acquiring, constructing, and installing other related improvements, and of assessing certain lots adjacent to Walworth Avenue, as extended, for costs of those improvements, in accordance with Chapter 727 of the Ohio Revised Code.

Recommendation BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> City Manager

**15.** <u>202101192</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with 64 E McMicken LLC, an affiliate of Northcrown Property LLC thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 64 E. McMicken Avenue in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the existing building into approximately 1,370 square feet of commercial space and approximately 4,003 square feet of residential space, consisting of 6 apartments, at a total construction cost of approximately \$919,178.

Recommendation BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> City Manager

**16.** <u>202101193</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **LEVYING** special assessments to pay for the costs of improving Walworth Avenue in the East End neighborhood of Cincinnati by constructing an extension thereto, together with curbs, street lighting, streetscaping, sidewalks, water mains, and storm and sanitary sewer; necessary remediation of soil in the related right-of-way; installing retaining walls; acquiring land necessary to construct and install the foregoing; and acquiring, constructing, and installing other related improvements, and any financing and administrative expenses in connection therewith.

Recommendation BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> City Manager

**17.** 202101194 **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with 116 E McMicken LLC, an affiliate of Northcrown Property LLC thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 116 E. McMicken Avenue in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the existing building into approximately 549 square feet of commercial space and approximately 5,183 square feet of residential space, consisting of 10 residential rental units, at a total construction cost of approximately \$869,325.

<u>Recommendation</u> BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> City Manager

**18.** <u>202101195</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **APPROVING AND AUTHORIZING** the execution of a Job Creation Tax Credit Agreement with Luma Financial Technologies, LLC, pursuant to which the company agrees to create 58 new jobs at 425 Walnut Street, Suite 2410 in the Central Business District of Cincinnati and, for a period of 4 years, the City agrees to provide an income tax credit equal to 35% of City income tax revenue from such new jobs.

Recommendation BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> City Manager

**19.** 202101196 ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 3/24/2021, APPROVING AND AUTHORIZING the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Robel 1 LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 18 W. Elder Street in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of an existing building into approximately 500 square feet of commercial space and approximately 3,300 square feet of residential space, consisting of 7 residential rental units, 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 \$300,000.

Recommendation BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> City Manager

**20.** <u>202101197</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Northcrown 56 McMicken LLC, an affiliate of Northcrown Property LLC thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 56 E. McMicken Avenue in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the existing building into approximately 1,081 square feet of commercial space and approximately 6,829 square feet of residential space, consisting of 13 apartments, at a total remodeling cost of approximately \$1,501,184.

Recommendation BUDGET AND FINANCE COMMITTEE

<u>Sponsors:</u> City Manager

**21.** 202101199 **ORDINANCE** submitted by Paula Boggs Muething, City Manager, on 3/24/2021, **AMENDING** the official zoning map of the City of Cincinnati to rezone certain real property commonly known as 3502-3526 Vine Street, 3429-3447 Vine Street, and 3412-3416 Marmet Avenue in the Avondale neighborhood, and certain additional real property generally located at the southeast corner of Vine Street and Erkenbrecher Avenue in the Corryville neighborhoods from the RMX, "Residential Mixed," and SF-4, "Single-Family," zoning districts to the PR, "Park and Recreation," zoning district to locate all of the Cincinnati Zoo and Botanical Garden properties within one consistent zoning district.

Recommendation ECONOMIC GROWTH AND ZONING COMMITTEE

<u>Sponsors:</u> City Manager

#### **BUDGET AND FINANCE COMMITTEE**

22. 202101049 **MOTION**, submitted by Councilmember Kearney, **WHEREAS** it has been determined that the City of Cincinnati is lacking in an estimated 28,000 affordable housing units, and; WHEREAS, the City of Cincinnati established an Affordable Housing Trust Fund in 2018 with \$700,000 from the proceeds from the sale of the Norfolk Railroad, and; WHEREAS, the amount currently in the City's Affordable Housing Trust Fund is insufficient to meet the demand for affordable housing in the City of Cincinnati, and; WHEREAS, the City of Cincinnati is to receive \$290 million from the American Rescue Plan, President Joe Biden's \$1.9 trillion coronavirus stimulus bill; Now, therefore: WE MOVE that the City Administration prepare a REPORT on the feasibility of depositing a total of \$50 million from the American Rescue Plan into the City of Cincinnati's Affordable Housing Trust Fund immediately upon receipt of such funds. (STATEMENT ATTACHED).

Recommendation ADOPT

<u>Sponsors:</u> Kearney

**23.** <u>202101054</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/17/2021, **AUTHORIZING** the City Manager to apply for, accept, and appropriate the sum of up to \$150,000 from the Ohio Environmental Protection Agency's Water Pollution Control Loan Fund for the purpose of providing financial assistance to Cincinnati homeowners with defective household sewage treatment systems; and AUTHORIZING the Director of Finance to deposit the grant funds into Public Health Research Fund 350.

#### Recommendation PASS EMERGENCY

<u>Sponsors:</u> City Manager

**24.** <u>202101066</u> **ORDINANCE** submitted by Paula Boggs Muething, City Manager, on 3/17/2021, **AUTHORIZING** the City Manager to apply for grant resources from the Clean Ohio Trails Fund grant program to be awarded by the Ohio Department of Natural Resources in an amount up to \$500,000 for the purpose of providing resources for the construction of Phase 6a of the Wasson Way Trail project.

#### Recommendation PASS

- <u>Sponsors:</u> City Manager
- **25.** <u>202101067</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/17/2021, **DETERMINING** to proceed with a special assessment for the Urban Forestry Program for the calendar year 2022, for the control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees in the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

#### **Recommendation PASS EMERGENCY**

<u>Sponsors:</u> City Manager

26. 202101068 ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 3/17/2021, AUTHORIZING the City Manager to accept and deposit a donation in an amount of \$100,000 from the Cincinnati Parks Foundation into Fund No. 430, "Parks Private Endowment," for the purpose of providing resources for the design and construction of the accessible plaza for the Ezzard Charles statue in Laurel Park; ESTABLISHING new capital improvement program project account no. 980x203x212009, "Ezzard Charles Statue Plaza," for the purpose of providing resources for the design and construction of the accessible plaza for the Ezzard Charles statue in Laurel Park; and further AUTHORIZING the transfer and appropriation of \$100,000 from the unappropriated surplus of Fund No. 430, "Parks Private Endowment," to newly established capital improvement program project account no. 980x203x212009, "Ezzard Charles Statue Plaza."

#### Recommendation PASS EMERGENCY

#### <u>Sponsors:</u> City Manager

**27.** <u>202101069</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/17/2021, **LEVYING** a special assessment for the Urban Forestry Program for the calendar year 2022, for control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade

trees within the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

#### **Recommendation PASS EMERGENCY**

<u>Sponsors:</u> City Manager

**28.** <u>202101076</u> **MOTION**, submitted by Councilmember Kearney, **WE MOVE** for the administration to compare the Balanced Development Priorities Analysis to the Peaslee Neighborhood's Developer Questionnaire. Include in the report any information requested from developers by Peaslee's Developer Questionnaire that is not gathered by the Department of community and Economic Development that City Council will not be provided in response to the Balanced Development Priorities Analysis and information requested by the Department of Community and Economic Development Priorities Analysis and information requested by the Department of Community and Economic Development Priorities Analysis and information requested by the Department of Community and Economic Development.

#### Recommendation ADOPT

#### <u>Sponsors:</u> Kearney

**29.** <u>202101077</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/17/2021, **ESTABLISHING** new capital improvement program project no. 980x199x211923, "Nature Playscape - Bramble Park"; and further AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$75,000 from the State of Ohio, Department of Natural Resources, Office of Real Estate & Land Management for the purpose of funding the design and construction of a new nature playscape at the Bramble Recreation Area, located at 6395 Bramble Avenue.

Recommendation PASS EMERGENCY

- <u>Sponsors:</u> City Manager
- **30.** <u>202101078</u> **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 3/17/2021, **AUTHORIZING** the City Manager apply for, accept, and appropriate a grant in the amount of up to \$68,000 from the Ohio Attorney General; and AUTHORIZING the appropriation of the sum of \$60,000 to Police's General Fund personnel operating budget account no. 050X228X7100, and \$8,000 to Cincinnati Police Department General Fund non personnel operating budget account no. 050X228X7200, for the purpose of funding threat assessment training for school resource officers and conducting school building vulnerability assessments.

#### <u>Recommendation</u> PASS EMERGENCY

<u>Sponsors:</u> City Manager

**31.** <u>202101124</u> **MOTION**, submitted by Councilmember Keating, Mann, Sundermann and Kearney, Our small businesses have suffered from the negative impacts of COVID-19 at a disproportionate level. The City of Cincinnati is to receive \$290 million from the American Rescue Plan, President Joe Biden's \$1.9 trillion coronavirus stimulus bill. **WE MOVE** that the City Administration prepare a REPORT on how much money, of the \$290 million from the American Rescue Plan, that the city could feasibly set aside to aid the small business community in their COVID-19 recovery efforts. This approach needs to be a two-pronged effort that not only targets specific small businesses but also takes a blanketed approach to focus on providing aid to neighborhood business districts. Therefore, **WE FURTHER MOVE** that the City Administration prepare a REPORT on how much money of \$290 million from the American Rescue Plan, that the city could feasibly set aside to identify and aid the neighborhood business districts that have been most negatively impacted by the COVID-19 impact. **WE FURTHER MOVE** that the City Administration prepare a REPORT on the eligibility requirements in which small businesses and neighborhood business districts would need to meet in order to qualify for relief through the city. These funds would be utilized to assist in the recovery from the losses our small businesses and communities have endured due to the COVID-19 Pandemic. We request these reports within 21 days to allocate enough time to consider these findings for the upcoming budget process. (STATEMENT ATTACHED)

#### Recommendation ADOPT

**Sponsors:** Keating, Mann, Sundermann and Kearney

**32.** <u>202101131</u> **MOTION**, submitted by Councilmember Sundermann, Kearney, Mann and Goodin, **WE MOVE** the Administration draft an ordinance to provide \$3,000,000 for the final gap in funding needed for the Warsaw Avenue Creative Campus in East Price Hill being developed by Price Hill Will, the premier nonprofit community development corporation serving the neighborhoods of East, West, and Lower Price Hill. The source of city revenue should be a portion of the anticipated \$291,590,000 that Cincinnati is anticipated to receive from the recently passed federal law, American Rescue Plan. (STATEMENT ATTACHED)

#### Recommendation ADOPT

- Sundermann, Kearney, Mann and Goodin
- 33. **MOTION**, submitted by Councilmember Goodin, Vice Mayor Smitherman, 202101152 Councilmember Sundermann, Keating and Kearney, During the COVID-19 pandemic, Cincinnati workers have adopted remote working at an amazing pace. Many routine office activities have been replaced by video conferencing and digital access to documents. While these innovations have kept our economy moving, they also present a looming crisis for Ohio's cities. More than 70 percent at Cincinnati's revenue is derived from its earning tax, and a significant portion of that percentage is derived from non-City residents who formerly worked in downtown offices. Recent litigation and potential legislation have called into question our ability to tax those workers in the long term. These actions notwithstanding, many businesses may simply choose to close their offices or reduce their physical footprint in the City, thus shrinking the tax base over time. Accordingly, WE MOVE that the Administration prepare a report outlining the loss in revenue to the City per annum if, variably, 10, 20 or 30 percent of non-resident City workers would no longer be subject to the City's earning tax.

#### Recommendation ADOPT

- **Sponsors:** Goodin, Kearney, Keating, Smitherman and Sundermann
- **34.** <u>202101182</u> **ORDINANCE (EMERGENCY),** submitted by Councilmember Mann, from Andrew W. Garth, City Solicitor, **DECLARING** that Hatch Street between Louden Street and Wareham Street in the Mt. Adams neighborhood shall hereby receive the honorary, secondary name of Pat Barry Way in honor of Pat Barry and in recognition of his contributions and dedication to the City of Cincinnati.

#### Recommendation PASS EMERGENCY

<u>Sponsors:</u> Mann

### **EDUCATION, INNOVATION & GROWTH COMMITTEE**

**35.** 202101145 **MOTION**, submitted by Councilmember Goodin, Vice Mayor Smitherman, Councilmember Sundermann, Kearney, and Keating, New 5G mobile communications technology has necessitated the deployment of thousands of small cell system towers throughout the United States. Such towers are now being deployed in Cincinnati neighborhoods. Accordingly, **WE MOVE** that the Administration advise Council regarding all potential methods of regulating 5G small cell system towers under the City's Municipal Code, Administrative Code and Zoning Code.

Recommendation ADOPT

**Sponsors:** Goodin, Keating, Kearney, Smitherman and Sundermann

#### ANNOUNCEMENTS

Adjournment



801 Plum Street, Suite 354 Cincinnati, Ohio 45202

Phone (513) 352-5243 Email steven.goodin@cincinnati-oh.gov Web www.cincinnati-oh.gov

Steven P. Goodin

March 22, 2021

#### MOTION

While Cincinnati continues to grapple with long-term, systemic fixes to its affordable housing shortage, it has become apparent that the location of such units remains an issue for many homeowners. A concentration of subsidized units in one neighborhood can artificially lower property values and deter market-rate and commercial development. Accordingly, **WE MOVE** that the Administration advise as to whether Council may limit the development of new subsidized housing units in neighborhoods which already contain 50 percent or more of such units in/their existing housing stock.

Councilmember Steven Goodin



Date: March 22, 2021

To:Councilmember Steven GoodinFrom:Andrew W. Garth, City SolicitorSubject:Resolution – Condeming Hate Crimes Against Asian-American<br/>Pacific Islander Communities

Transmitted herewith is a resolution captioned as follows:

**CONDEMNING** hate crimes and discriminatory rhetoric directed against Asian-American and Pacific Islander communities at all times, but especially in light of the skyrocketing number of incidents since the advent of the COVID-19 pandemic.

AWG/CMZ/(lnk) Attachment 334619

CMZ

#### RESOLUTION NO. \_\_\_\_\_ - 2021

**CONDEMNING** hate crimes and discriminatory rhetoric directed against Asian-American and Pacific Islander communities at all times, but especially in light of the skyrocketing number of incidents since the advent of the COVID-19 pandemic.

WHEREAS, hate crimes against our Asian-American and Pacific Islander communities have skyrocketed since the advent of the COVID-19 pandemic, driven by the reprehensible rhetoric of some political leaders blaming the virus on those of Asian and Pacific Island descent; and

WHEREAS, according to one report, there have been 3,800 such crimes reported since March 2020; and

WHEREAS, such rhetoric and actions have no place in a civilized, open society which prizes tolerance and acceptance of all, regardless of race or creed; now, therefore,

BE IT RESOLVED by the City of Cincinnati, State of Ohio:

Section 1. That the Mayor and this Council hereby raise their voices in condemnation of

both the violence and vile language routinely directed at our Asian-American and Pacific Islander

communities, regardless of its source, and that we stand in solidarity and support of our fellow

citizens whenever they are faced with irrationality and hate.

Section 2. That this resolution be spread upon the minutes of Council.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest:

Clerk

Submitted by Councilmember Goodin





Melissa Autry, CMC Clerk of Council

Office of the Clerk

801 Plum Street, Suite 308 Cincinnati, Ohio 45202 Phone (513) 352-3246 Fax (513) 352-2578

March 17, 2021

#### MOTION

The Cincinnati Police Department (CPD) recently reported that its complement of uniformed officers stands below 1,000 for the first time in decade as a result of retirements and attrition. This reduction in force comes at a time when Cincinnati neighborhoods have been faced with a record number of murders, as well as an increase in property and quality of life offenses as a result of the COVID-19 pandemic. Additionally, the community continues to seek thoughtful engagement between the Cincinnati Police Department and mental health and addiction service providers to, when appropriate, divert potential criminal defendants into treatment. Accordingly, WE **MOVE** that a portion of Cincinnati's American Rescue Plan appropriation be committed to: 1) immediately fund a new CPD recruit class in 2021 to better facilitate community policing and criminal investigations; 2) fund additional training and police personnel for CPD's Mental Health Response Team (MHRT); 3) fund training to better integrate the MHRT with existing mental health and substance abuse providers and to create a mechanism to track those citizens who are referred to such providers; 4) to fund the local chapter of the Saving Our Kings and Queens youth intervention program headed by Mitch Morris; 5) to fund Rev. Peterson Mingo's Southern Christian Leadership Program's Rites of Passage initiative, which includes a summer camp, anti-gang and anti-drug education and numerous youth sports programs in Evanston; and 6) to once again fully fund Hope Dudley's UCanSpeakForMe homicide victim's family assistance program.

Councilmember Steven Goodin

Chilpan ze Spirthumo

Vice Mayor Christopher Smitherman



801 Plum Street, Suite 356 Cincinnati, Ohio 45202

Phone (513) 352-3464 Email christopher.smitherman@ cincinnati-oh.gov Web www.cincinnati-oh.gov

Christopher E. C. Smitherman Cincinnati Vice Mayor

March 18, 2021

#### MOTION

**WE MOVE** that the first funds from the American Rescue Plan Act be used to meet our reserve target goal of 16.7%, or two months of our prior year's revenue.

**WE FURTHER MOVE** that these funds be used to close the projected budget deficits for fiscal years 2022 and 2023.

**WE FURTHER MOVE** that the City of Cincinnati make whole any other city funds that were impacted by Covid-19.

Councilmember Steven Goodin

Chilphin S.C. Mitterman

Vice Mayor Christopher Smitherman

Councilmember David Mann

**Statement:** Our city has suffered many losses over the past year due to Covid-19, including the loss of revenue that is vital to our city's operation. The City of Cincinnati is expected to receive close to \$290 million from the American Rescue Act Plan. It is essential that the first allocation of these funds be used to continue the operation of a sound city budget and ensure our reserves are sufficient. Our reserve target goal is estimated to be \$14.5 million. We must begin by getting our financial house in order due to Covid-19.



801 Plum Street, Suite 356 Cincinnati, Ohio 45202

Phone (513) 352-3464 Email christopher.smitherman@ cincinnati-oh.gov Web www.cincinnati-oh.gov

Christopher E. C. Smitherman Cincinnati Vice Mayor

March 18, 2021

#### MOTION

**WE MOVE** that funds from the American Rescue Plan Act be allocated to address staffing shortages identified by department heads and recommended by the administration.

Clizple El Hilter

Vice Mayor Christopher Smitherman

**Statement:** City departments have experienced reductions in staff while undertaking increased workloads. It is necessary for our departments to be properly staffed to keep up with the current work volume. The intent of this motion is to ensure that pre-Covid staffing levels are restored.



City Hall, Room 346B 801 Plum Street Cincinnati, Ohio 45202

Phone (513) 352-3640 Email Betsy.Sundermann@cincinnati-oh.gov

Betsy Sundermann Cincinnati City Councilmember

March 17, 2021

#### MOTION

**WE MOVE** that the City Administration include in the FY22 budget a sufficient portion from the anticipated funds that Cincinnati is to receive through the American Rescue Plan in order to complete any funding needs for the construction of the Western Hills Viaduct.

<u>Betsy</u> Sundamann Betsy Sundermann

### **STATEMENT**

The current estimated cost for replacing the Western Hills Viaduct is \$335,000,000, which includes design, right of way acquisition, construction, removals, and interim maintenance on the existing viaduct until the new viaduct is complete and operational.

The City of Cincinnati is applying for \$150,000,000 in grant funding from the United States Department of Transportation through the Infrastructure for Rebuilding America for resources to supplement the funds which the City has previously secured to pay for the replacement of the Western Hills Viaduct.

It is estimated that the City of Cincinnati will receive \$291,590,000 from the American Rescue Plan (ARP). With the expectation that we are successful in receiving the \$150,000,000 grant, the FY22 budget should include a portion of the ARP funds to cover any remaining shortage to complete the project.

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City Hall, Room 346B 801 Plum Street Cincinnati, Ohio 45202 Phone (513) 352-3640 Email Betsy.Sundermann@cincinnati-oh gov

Betsy Sundermann Cincinnati City Councilmember

MARCH 18, 2021

### MOTION

**WE MOVE** that the City Administration include in the FY22 budget \$1,400,000 for an additional class of 43 police recruits to ensure that the Cincinnati Police Department can adequately keep up with attrition. The sources of city revenue should first be a COPS Hiring grant and then any additional needed funds from the anticipated \$291,590,000 that Cincinnati is to receive from the recently passed federal law, American Rescue Plan.

Betsy Sundermann Belsy Sundermann

# **STATEMENT**

The Cincinnati Department of Police (CPD) is currently facing significant issues with staffing. The City received a grant from the Community Oriented Policing Services (COPS) that will fund up to 86 new recruits with the first class of 43 beginning in July, 2021, and the second class of 43 recruits beginning no earlier than 2022. However, based on the current attrition data, this is not enough in order to keep up with the desired sworn strengths.

Currently, CPD has 990 active sworn officers. This is 69 below the budget complement of 1,059. Furthermore, 183 officers have 25+ years of service and these officers are at least 48 years old. This does not include purchased time or previous employment, all of which could contribute to a hastening of the attrition rate we are seeing.

The nine-year average for attrition is 38.78 officers/year with average tenure at retirement of 29.22 years. The five-year average is 43.6 officers/year. Most of the officers who leave CPD retire which accounts for 77.27% while 22.73% of officers leave under other circumstances. According to current projections, the staffing of 990 officers could decrease to 938 by March of 2022. This third graduating class of 43 recruits would only increase staffing to 981 officers. This amount would be 78 below the authorized complement for the City pointing to the need for the City to increase its police recruits to continue providing safety and security for our communities.



Date: March 24, 2021

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

From: Paula Boggs Muething, City Manager

Subject: Liquor License – Transfer of Ownership

#### FINAL RECOMMENDATION REPORT

OBJECTIONS: None

This is a report on a communication from the State of Ohio, Division of Liquor Control, advising of a permit application for the following:

APPLICATION:	2638513
PERMIT TYPE:	TRFO
CLASS:	D5J D6
NAME:	FARE U LLC
DBA:	FIRESIDE PIZZA
	773 E MCMILLAN ST
	CINCINNATI, OH 45206

The Department of Buildings & Inspections has not responded with their investigation as of today's date.

On February 4, 2021 Walnut Hills Area Council was notified of this application and do not object.

Police Department Approval

David M. Laing, Assistant City Prosecutor Law Department - Recommendation

MUST BE RECEIVED BY OHIO DIVISION OF LIQUOR CONTROL BY: March 26, 2021



Date: March 24, 2021

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

From: Paula Boggs Muething, City Manager

Subject: Liquor License – NEW

#### FINAL RECOMMENDATION REPORT

OBJECTIONS: Cincinnati Police Department, Department of Buildings & Inspections, Roselawn Community Council, and Roselawn Business Alliance

This is a report on a communication from the State of Ohio, Division of Liquor Control, advising of a permit application for the following:

APPLICATION:	6353350
PERMIT TYPE:	NEW
CLASS:	D1 D3
NAME:	NEPHEWS LLC
DBA:	NEPHEWS
	7532 READING RD
	CINCINNATI, OH 45237

On February 4, 2021 Roselawn Community Council was notified of this application and do object.

Police Department Approval

MUST BE RECEIVED BY OHIO DIVISION OF LIQUOR CONTROL BY: March 26, 2021



March 24, 2021 202101183

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

From: Paula Boggs Muething, City Manager

Subject: Ordinance – Get Vaccinated OHIO Grant

Attached is an Ordinance captioned:

**AUTHORIZING** the City Manager to apply for, accept and appropriate a grant in the amount of \$303,230 from the Get Vaccinated OHIO Public Health Initiative, funded by the Ohio Department of Health, to support activities that will increase immunization rates in children under two years of age, school aged children and adolescents; and AUTHORIZING the Director of Finance to deposit the grant funds into Public Health Research Fund 350.

This Ordinance will authorize the City Manager to apply for, accept and appropriate a grant in the amount of \$303,230 from the Get Vaccinated OHIO Public Health Initiative, funded by the Ohio Department of Health, to support activities that will increase immunization rates in children under two years of age, school aged children and adolescents. This Ordinance will also authorize the Director of Finance to deposit the grant funds into Public Health Research Fund 350.

Get Vaccinated OHIO Public Health Initiative is in accordance with the "Sustain" goal to "become a healthier Cincinnati" as described on page 181 of Plan Cincinnati (2012).

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

Attachment





# City of Cincinnati An Ordinance No.\_\_\_\_\_

MSS BUL

- 2021

**AUTHORIZING** the City Manager to apply for, accept, and appropriate a grant in the amount of \$303,230 from the Get Vaccinated OHIO Public Health Initiative, funded by the Ohio Department of Health, to support activities that will increase immunization rates in children under two years of age, school aged children and adolescents; and AUTHORIZING the Director of Finance to deposit the grant funds into Public Health Research Fund 350.

WHEREAS, a grant is available from the Get Vaccinated OHIO Public Health Initiative, funded by the Ohio Department of Health, in the amount of \$303,230 to support activities that will increase immunization rates in children under two years of age, school aged children, and adolescents; and

WHEREAS, grant activities will include immunization assessment, targeted reminder and recall, identifying disparities in low immunization levels, educational activities involving families and providers, assuring schools report vaccination rates and school education, and assuring the vaccination of high-risk infants exposed to hepatitis B disease as methods of increasing immunization rates for both public and private immunization providers; and

WHEREAS, the Cincinnati Health Department's grant application is due to the Ohio Department of Health on April 5, 2021, but no grant funds will be accepted without the approval of City Council; and

WHEREAS, there is no local match required, and there are no new FTEs associated with this grant; and

WHEREAS, this ordinance is in accordance with the "Sustain" goal to "[b]ecome a healthier Cincinnati" as described on page 181 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is authorized to apply for, accept, and appropriate a

grant in the amount of \$303,230 from the Get Vaccinated OHIO Public Health Initiative, funded

by the Ohio Department of Health, to support activities that will increase immunization rates in

children under two years of age, school aged children, and adolescents.

Section 2. That Council hereby authorizes the Director of Finance to deposit the funds into Public Health Research Fund 350.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of the grant and Sections 1 and 2 hereof.

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest: \_\_\_\_\_ Clerk



March 24, 2021 202101184

Subject:	Ordinance – Delta Dental Foundation COVID-19 Dental Equipment Grant
From:	Paula Boggs Muething, City Manager
То:	Mayor and Members of City Council

Attached is an Ordinance captioned:

**AUTHORIZING** the City Manager to accept and appropriate grant resources in the amount of \$20,000 from the Delta Dental Foundation's COVID-19 Dental Equipment Fund, to provide funds for the Cincinnati Health Department's purchase of COVID-19 related dental supplies and equipment, including personal protective equipment ("PPE"), air purifiers, teledentistry equipment, and other necessary resources; and AUTHORIZING the Director of Finance to receive and deposit the grant funds into Public Health Research Fund 350.

This Ordinance will authorize the City Manager to accept and appropriate a grant in the amount of \$20,000 from the Delta Dental Foundation's COVID-19 Dental Equipment Fund to provide funds for the Cincinnati Health Department's purchase of COVID-19 related dental supplies and equipment, including personal protective equipment, air purifiers, teledentistry equipment, and other necessary resources. This Ordinance will also authorize the Director of Finance to deposit the grant funds into Public Health Research Fund 350.

Preventing and controlling COVID-19 cases is in accordance with the "Sustain" goal to "become a healthier Cincinnati" as described on page 181 of Plan Cincinnati (2012).

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

Attachment





# City of Cincinnati An Ordinance No.\_\_\_\_

CFG BUG

-2021

**AUTHORIZING** the City Manager to apply for, accept and appropriate grant resources in the amount of \$20,000 from the Delta Dental Foundation's COVID-19 Dental Equipment Fund to provide funds for the Cincinnati Health Department's purchase of COVID-19 related dental supplies and equipment, including personal protective equipment, air purifiers, teledentistry equipment, and other necessary resources; and AUTHORIZING the Director of Finance to receive and deposit the grant funds into Public Health Research Fund 350.

WHEREAS, the Health Department applied for a grant of \$20,000 from the Delta Dental Foundation's COVID-19 Dental Equipment Fund to provide funds for the Cincinnati Health Department's purchase of COVID-19 related dental supplies and equipment, including personal protective equipment, air purifiers, teledentistry equipment, and other necessary resources; and

WHEREAS, the grant was approved by the Delta Dental Foundation on February 18, 2021, but should this Ordinance not be approved, the grant funding will not be accepted; and

WHEREAS, there is no local match required and no FTEs are associated with this grant; and

WHEREAS, preventing and controlling COVID-19 cases is in accordance with the "Sustain" goal to "become a healthier Cincinnati" as described on page 181 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is authorized to apply for, accept and appropriate grant

resources in the amount of \$20,000 from the Delta Dental Foundation's COVID-19 Dental

Equipment Fund to provide funds for the Cincinnati Health Department's purchase of COVID-19

related dental supplies and equipment, including personal protective equipment, air purifiers,

teledentistry equipment, and other necessary resources.

Section 2. That the Director of Finance is authorized to deposit the grant funds into Public

Health Research Fund 350.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 and 2 hereof.

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2021

Mayor

Attest: \_\_\_\_\_ Clerk



March 24, 2021 202101188

Subject:	Emergency Ordinance – FY 2021 Mid-Year Budget Adj	ustments
From:	Paula Boggs Muething, City Manager	
То:	Mayor and Members of City Council	202101188

Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the transfer of the sum of \$60,850 within the General Fund from and to various operating budget accounts for the purpose of providing funds for the ongoing needs of City departments in accordance with the attached Schedule of Transfer; AUTHORIZING the transfer of the sum of \$1,744,743 within the Restricted Funds from and to various operating accounts for the purpose of providing funds for the ongoing needs of City departments in accordance with the attached Schedule of Transfer; and AUTHORIZING the appropriation of \$300,000 from the unappropriated surplus of 9-1-1 Cell Phone Fees Fund 364 for the purpose of realigning and providing funds for the ongoing needs of City departments in accordance with the attached Schedule of Transfer.

This Emergency Ordinance authorizes the transfer of funds within appropriations in the General Fund and various restricted funds, and also authorizes the transfer of funds from the unappropriated surplus of 9-1-1 Cell Phone Fees Fund 364 to realign and provide funds for the ongoing needs of various City departments according to the attached Schedules of Transfer. A summary of each transfer is as follows:

- General Fund 050 Savings in the Public Employees Assistance Program (PEAP) non-departmental account are being transferred to the Audit & Examiner's Fees non-departmental account to provide resources for a contractual increase related to the external accounting firm that works on the City's Comprehensive Annual Financial Report (CAFR).
- Water Works Fund 101 Savings in the General Fund Overhead nondepartmental account are being transferred to the Distribution Division. This will provide resources for additional non-personnel expenses in the division related to a higher than average number of water main breaks during FY 2021.
- Stormwater Management Fund 107 Funds are being transferred within appropriations in this fund to provide necessary resources for the Private Lot Abatement Program (PLAP) in the Department of Buildings and Inspections. The need is based on an expected increased workload during the spring growing season and will be used to pay private contractors to abate tall grass, weeds, and litter on private lots.
- Citizens Jobs Fund 308 This transfer within appropriations will transfer resources budgeted in the Department of Recreation to the City Manager's

Office. The summer youth employment program contract is being executed in the City Manager's Office.

- Streetcar Fund 455 This transfer within appropriations will realign budgeted resources with actual expenses. The realignment will eliminate the need for the Department of Transportation and Engineering to process reimbursement interdepartmental (ID) bills related to streetcar expenses.
- 9-1-1 Cell Phone Fees Fund 364 This transfer will provide resources for the Emergency Communications Center (ECC) to replace their uninterruptible power supply (UPS) which supplies consistent power to the 9-1-1 center and ensures that the it remains operational during power failures and fluctuations. Funds are available in the unappropriated surplus of the fund to provide the necessary resources. Reimbursements from the Coronavirus Aid, Relief, and Economic Security (CARES) Act from FY 2020 are being utilized to cover the majority of the costs. The reimbursement was treated as revenue to the fund's unappropriated surplus since it was related to a prior-year expense.

The reason for the emergency is the immediate need to accomplish the authorized transfers and appropriations so that funding is in place for the remainder of FY 2021.

The Administration recommends passage of this Emergency Ordinance.

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

Attachments

# EMERGENCY City of Cincinnati An Ordinance No.\_\_\_\_\_

ZDS

- 2021

**AUTHORIZING** the transfer of the sum of \$60,850 within the General Fund from and to various operating budget accounts for the purpose of providing funds for the ongoing needs of City departments in accordance with the attached Schedule of Transfer; AUTHORIZING the transfer of the sum of \$1,744,743 within the Restricted Funds from and to various operating accounts for the purpose of providing funds for the ongoing needs of City departments in accordance with the attached Schedule of Transfer; and AUTHORIZING the appropriation of \$300,000 from the unappropriated surplus of 9-1-1 Cell Phone Fees Fund 364 for the purpose of realigning and providing funds for the ongoing needs of City departments in accordance with the attached Schedule of Transfer.

WHEREAS, various transfers within the General Fund and various Restricted Funds are necessary to provide for the ongoing needs of various City departments; now, therefore,

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

Section 1. That the sum of \$60,850 existing within the General Fund is hereby transferred

within said fund according to the attached Schedule of Transfer - Attachment A, for the purpose

of providing funds for the ongoing needs of City departments.

Section 2. That the sum of \$1,744,743 existing within the various Restricted Funds is

hereby transferred within said funds according to the attached Schedule of Transfer - Attachment

B, for the purpose of providing funds to provide for the ongoing needs of City departments.

Section 3. That the sum of \$300,000 is hereby appropriated from the unappropriated surplus of the 9-1-1 Cell Phone Fees Fund according to the attached Schedule of Transfer – Attachment C, for the purpose of realigning and providing funds for the ongoing needs of City departments.

Section 4. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the terms of Sections 1 through 3 hereof and the Schedule of Transfer attached hereto.

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 funding is in place for the remainder of FY 2021.

Passed: \_\_\_\_\_\_ 2021

John Cranley, Mayor

Attest: \_\_\_\_\_ Clerk

#### SCHEDULE OF TRANSFER

#### ATTACHMENT A FY 2021 MID-YEAR ADJUSTMENT SCHEDULE OF TRANSFER

Fund 050 General Fund

			Appropriatio	n			Appropriatio	n
REDUCTIONS	Fund A	gency	Unit	\$ Amount	INCREASES	Fund Agency	Unit	\$ Amount
TRANSFER WITHIN APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS			
SOURCE ACCOUNTS								
					USE ACCOUNTS			
NON-DEPARTMENTAL ACCOUNTS					NON-DEPARTMENTAL ACCOUNTS			
PUBLIC EMPLOYEES ASSISTANCE PROGRAM (PEAP)	050	919	7500	60,850	AUDIT AND EXAMINERS' FEES	050 941	7200	60,850
TOTAL FUND REDUCTIONS				60,850	TOTAL FUND INCREASES			60,850

#### ATTACHMENT B

#### FY 2021 MID-YEAR ADJUSTMENT SCHEDULE OF TRANSFER

Fund 101 Water Works

			Appropriation					Appropriation	
REDUCTIONS	und Ag	gency	Unit	\$ Amount	INCREASES	Fund	Agency	Unit	\$ Amount
TRANSFER WITHIN APPROPRIATIONS SOURCE ACCOUNTS GREATER CINCINNATI WATER WORKS GENERAL FUND OVERHEAD	101	944	7200		SUPPLEMENTAL APPROPRIATIONS USE ACCOUNTS GREATER CINCINNATI WATER WORKS DISTRIBUTION	101	304	7200	500,000
TOTAL FUND REDUCTIONS				500,000	TOTAL FUND INCREASES				500,000

#### Fund 107 Stormwater Management

			Appropriation					Appropriation	
REDUCTIONS	Fund Ag	gency	Uait	\$ Amount	INCREASES	Fund	Igency	Unit	S Amount
TRANSFER WITHIN APPROPRIATIONS SOURCE ACCOUNTS PUBLIC SERVICES					SUPPLEMENTAL APPROPRIATIONS USE ACCOUNTS BUILDINGS AND INSPECTIONS				
NEIGHBORHOOD OPERATIONS	107	253	7400	100,000	PRIVATE LOT ABATEMENT PROGRAM	107	212	7200	100,000
TOTAL FUND REDUCTIONS				100,000	TOTAL FUND INCREASES		_		100,000

#### Fund 308 Citizens Jobs

			Appropriatio	n	Appropriatio	a
REDUCTIONS	Fund A	gency	Unit	\$ Amount	INCREASES Fund Agency Unit	\$ Amount
TRANSFER WITHIN APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS	
SOURCE ACCOUNTS					USE ACCOUNTS	
RECREATION					CITY MANAGER'S OFFICE	
SUPPORT SERVICES	308	199	7100	1,015,000	CITY MANAGER 308 101 7200	1,015,000
TOTAL FUND REDUCTIONS				1,015,000	TOTAL FUND INCREASES	1,015,000

#### Fund 455 Streetcar Operations

igency	Unit		INCREASES SUPPLEMENTAL APPROPRIATIONS USE ACCOUNTS	Fund	Agency	Unit	S Amoun
			USE ACCOUNTS				
			NON-DEPARTMENTAL ACCOUNTS				
239	7100	88,309	TRAFFIC SERVICES	455	238	7100	88,309
239	7500	41,434	TRAFFIC SERVICES	455	238	7500	41,434
		120 747	TOTAL PUND INCOPACES				129,743
			239 7100 88,309 239 7500 41,434	239 7100 88,309 TRAFFIC SERVICES	239         7100         88,309         TRAFFIC SERVICES         455           239         7500         41,434         TRAFFIC SERVICES         455	239         7100         88,309         TRAFFIC SERVICES         455         238           239         7500         41,434         TRAFFIC SERVICES         455         238	239         7100         88,309         TRAFFIC SERVICES         455         238         7100           239         7500         41,434         TRAFFIC SERVICES         455         238         7500

#### ATTACHMENT C FY 2021 MID-YEAR ADJUSTMENT SCHEDULE OF TRANSFER

Fund 364 9-1-1 Cell Phone Fees

REDUCTIONS	Fund Age	Appropriation Unit	S Amount	INCREASES	Fund .	Agency	Appropriation Unit	\$ Amount
TRANSFER WITHIN APPROPRIATIONS SOURCE ACCOUNTS UNAPPRORPRIATED SURPLUS	364			SUPPLEMENTAL APPROPRIATIONS USE ACCOUNTS CITY MANAGER'S OFFICE EMERGENCY COMMUNICATIONS CENTER	364	103	7300	300,000
TOTAL FUND REDUCTIONS			300,000	TOTAL FUND INCREASES				300,000

#### SCHEDULE OF TRANSFER

#### ATTACHMENT A FY 2021 MID-YEAR ADJUSTMENT SCHEDULE OF TRANSFER

Fund 050 General Fund

		A	Appropriation	1				Appropriation	
REDUCTIONS	Fund A	gency	Unit	\$ Amount	INCREASES	Fund	Agency	Unit	\$ Amount
TRANSFER WITHIN APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS					USE ACCOUNTS				
NON-DEPARTMENTAL ACCOUNTS					NON-DEPARTMENTAL ACCOUNTS				
PUBLIC EMPLOYEES ASSISTANCE PROGRAM (PEAP)	050	919	7500	60,850	AUDIT AND EXAMINERS' FEES	050	941	7200	60,850
TOTAL FUND REDUCTIONS				60,850	TOTAL FUND INCREASES				60,850

#### ATTACHMENT B FY 2021 MID-YEAR ADJUSTMENT SCHEDULE OF TRANSFER

Fund 101 Water Works

		Appropria	tion			Appropriation	n
REDUCTIONS	Fund Ager	icy Unit	\$ Amount	INCREASES	Fund Agency	Unit	\$ Amount
TRANSFER WITHIN APPROPRIATIONS				SUPPLEMENTAL APPROPRIATIONS			
SOURCE ACCOUNTS				USE ACCOUNTS			
GREATER CINCINNATI WATER WORKS				GREATER CINCINNATI WATER WORKS			
GENERAL FUND OVERHEAD	101 94	4 7200	500,000	DISTRIBUTION	101 304	7200	500,000
TOTAL FUND REDUCTIONS			500,000	TOTAL FUND INCREASES			500,000

#### Fund 107 Stormwater Management

			Appropriation	n				Appropriation	
REDUCTIONS	Fund A	agency	Unit	\$ Amount	INCREASES	Fund 4	Agency	Unit	\$ Amount
TRANSFER WITHIN APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS					USE ACCOUNTS				
PUBLIC SERVICES					BUILDINGS AND INSPECTIONS				
NEIGHBORHOOD OPERATIONS	107	253	7400	100,000	PRIVATE LOT ABATEMENT PROGRAM	107	212	7200	100,000
TOTAL FUND REDUCTIONS				100,000	TOTAL FUND INCREASES				100,000

#### Fund 308 Citizens Jobs

		Appropriation					Appropriation	
REDUCTIONS Fund	Agency	Unit	\$ Amount	INCREASES	Fund .	Agency	Unit	\$ Amount
TRANSFER WITHIN APPROPRIATIONS				SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS				USE ACCOUNTS				
RECREATION				CITY MANAGER'S OFFICE				
SUPPORT SERVICES 308	199	7100	1,015,000	CITY MANAGER	308	101	7200	1,015,000
TOTAL FUND REDUCTIONS			1,015,000	TOTAL FUND INCREASES				1,015,000

Fund 455 Streetcar Operations

		Аррі	ropriation					Appropriation	
REDUCTIONS Fund	d Agen	ncy	Unit	\$ Amount	INCREASES	Fund	Agency	Unit	\$ Amount
TRANSFER WITHIN APPROPRIATIONS					SUPPLEMENTAL APPROPRIATIONS				
SOURCE ACCOUNTS					USE ACCOUNTS				
TRANSPORTATION AND ENGINEERING					NON-DEPARTMENTAL ACCOUNTS				
TRAFFIC ENGINEERING 455	5 23	39	7100	88,309	TRAFFIC SERVICES	455	238	7100	88,309
TRAFFIC ENGINEERING 455	5 23	39	7500	41,434	TRAFFIC SERVICES	455	238	7500	41,434
TOTAL FUND REDUCTIONS				129,743	TOTAL FUND INCREASES				129,743

### ATTACHMENT C FY 2021 MID-YEAR ADJUSTMENT SCHEDULE OF TRANSFER

Fund 364 9-1-1 Cell Phone Fees

Appropriation		Appropriation			1	
REDUCTIONS	Fund Agency	Unit S Amou	nt INCREASES	Fund Agency	Unit	\$ Amount
TRANSFER WITHIN APPROPRIATIONS			SUPPLEMENTAL APPROPRIATIONS			
SOURCE ACCOUNTS			USE ACCOUNTS			
UNAPPRORPRIATED SURPLUS			CITY MANAGER'S OFFICE			
	364	300,0	00 EMERGENCY COMMUNICATIONS CENTER	364 103	7300	300,000
TOTAL FUND REDUCTIONS		300,00	0 TOTAL FUND INCREASES			300,000



March 24, 2021 202101190

To: Mayor and Members of City Council

From: Paula Boggs Muething, City Manager

## Subject: Emergency Ordinance – ODNR Waterway Safety Grant

Attached is an Emergency Ordinance captioned:

ESTABLISHING improvement new capital program project no. 980x199x211921, "Riverside Boat Ramp Improvements"; and AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in an amount of up to \$200,000 from the Ohio Department of Natural Resources Waterways Safety Fund for the purpose of providing funding for the design and construction of the improved boat ramp, boat dock, and restrooms at the Riverside boat ramp.

This Emergency Ordinance authorizes the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$200,000 from the State of Ohio, Ohio Department of Natural Resources (ODNR) Waterways Safety Fund (WSF) for the purpose of funding design and construction of a new loading dock, any repairs to the existing dock, renovation of the existing restrooms to be Americans with Disabilities Act (ADA) compliant, any ADA updates needed to access the dock, and any new lighting that is needed at the ramp and boat parking areas. In addition, this Emergency Ordinance also authorizes the Finance Director to establish new capital improvement program project account no. 980x199x211921, "Riverside Boat Ramp Improvements", for the purpose of providing grant resources for the engineering, design, and construction of the improvements.

The ODNR Waterways Safety Fund is a federally funded reimbursement grant program that provides 75% of project funding, so there is a 25% match required. The required match of \$50,000 will be offset by CRC providing engineering and design services, in-kind labor contributed by department staff and will provide the remaining cash funds from resources available in Recreation's Outdoor Facilities Renovation capital improvement program project account no. 980x199x211900, "Outdoor Facilities Renovation." There are no new FTE are associated with the grant. While the grant application deadline is April 1st, 2021, funding will not be accepted without the approval of this Emergency Ordinance by the City Council.

This Emergency Ordinance is in accordance with the "Live" goal to "Create a more livable community," as described on page 156 of Plan Cincinnati (2012).

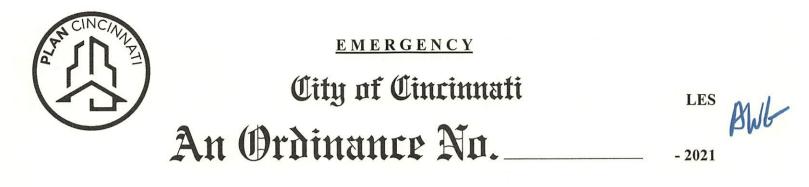
The reason for the emergency is the immediate need to assure timely submission of the grant application and acceptance of any granted funds.

The Administration recommends passage of this Emergency Ordinance.

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



Attachment



**ESTABLISHING** new capital improvement program project no. 980x199x211921, "Riverside Boat Ramp Improvements"; and AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in an amount of up to \$200,000 from the Ohio Department of Natural Resources Waterways Safety Fund for the purpose of providing funding for the design and construction of the improved boat ramp, boat dock, and restrooms at the Riverside boat ramp.

WHEREAS, a grant is available from the Ohio Department of Natural Resources ("ODNR") Waterways Safety Fund which will provide funding for the design and construction of a new loading dock, repairs to the existing dock, renovation of the existing restrooms to comply with the Americans with Disabilities Act ("ADA"), accessibility updates to the existing dock required under the ADA, and any necessary additional lighting at the ramp and boat parking areas for the facilities at the Riverside boat ramp; and

WHEREAS, the ODNR Waterways Safety Fund is a federally funded reimbursement grant program that provides up to 75% project funding and requires a 25% local match; and

WHEREAS, the required match of \$50,000 will be partially offset by Cincinnati Recreation Commission ("CRC") staff providing engineering and design services as in-kind labor and the remaining local match amount will come from resources available in capital improvement program project account no. 980x199x211900, "Outdoor Facilities Renovation"; and

WHEREAS, the application deadline for these grant resources is April 1, 2021, and CRC intends to apply by this date, but funding will not be accepted without authorization by City Council; and

WHEREAS, there are no new FTEs associated with the acceptance of this grant; and

WHEREAS, capital improvements to CRC facilities are in accordance with the "Live" goal to "Create a more livable community" as described on page 156 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the Finance Director is hereby authorized to establish new capital

improvement program project account no. 980x199x211921, "Riverside Boat Ramp

Improvements" for the purpose of providing resources for the design and construction of the improved boat ramp, boat dock, and restrooms at the Riverside boat ramp.

Section 2. That the City Manager is hereby authorized to apply for, accept, and appropriate an amount of up to \$200,000 from Ohio Department of Natural Resources Waterways Safety Fund into the newly established capital improvement program project account no. 980x199x211921, "Riverside Boat Ramp Improvements."

Section 3. That the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Sections 1 and 2 hereof.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of 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 assure the timely submission of the grant application and acceptance of any granted funds.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest: \_\_\_\_\_

Clerk



March 24, 2020

Subject:	ORDINANCE – DETERMINING TO PROCEED WALW SPECIAL ASSESSMENT	ORTH
From:	Paula Boggs Muething, City Manager	
To:	Mayor and Members of City Council	202101191

Attached is an Emergency Ordinance captioned as follows:

**DETERMINING** to proceed with improving Walworth Avenue in the East End neighborhood of Cincinnati by constructing an extension thereto, together with curbs, street lighting, streetscaping, sidewalks, water mains, and storm and sanitary sewer; necessary remediation of soil in the related right-of-way; installing retaining walls; acquiring land necessary to construct and install the foregoing; and acquiring, constructing, and installing other related improvements, and of assessing certain lots adjacent to Walworth Avenue, as extended, for costs of those improvements, in accordance with Chapter 727 of the Ohio Revised Code.

## **BACKGROUND/CURRENT CONDITIONS**

The project site is located at 3100 Walworth Avenue, Cincinnati in the East End neighborhood of Cincinnati. In total, the site includes 7.1410 acres of vacant, unimproved land where 39 single family lots have been created and construction has commenced on a number of the lots. The whole assembled site comprises the Homearama Development proposed by East End Developers LLC.

# **DEVELOPER INFORMATION**

East End Developers, LLC, an affiliate of Meierjohan Building Group – led by Thomas J. Ackermann and Ralph Meierjohan, will be the developing entity of the site. T.J. Ackermann and Ralph Meierjohan have each been developing and building communities in the Greater Cincinnati area for the past 30 years. Together they have a large wealth of knowledge and experience in the field of real estate development, construction, and project management. Upon completion of public improvements and site preparation, third party home builders will purchase parcels for single-family home development from East End Developers, LLC.

# **PROJECT DESCRIPTION**

## Ordinance Determining to Proceed Walworth Junction-East End Development, LLC Page **2** of 3

Developer has remediated a contaminated brownfield site at 3101 Walworth Avenue in the East End neighborhood and prepared the site for the construction of 39 single family homes. This is the site of <u>Homearama @ Walworth Junction</u> in partnership with the Greater Cincinnati Home Builders Association. Developer will cause construction of the 39 single family homes; each home will consist of approximately 3,000 square feet of living space and range in sales price from \$800,000 to \$1,600,000. In addition, the Developer will be seeking LEED Neighborhood Development – a first in the City of Cincinnati – requiring all homes built in the subdivision to meet LEED Gold standards.

Developer will also construct several public infrastructure improvements. This includes sidewalks, extension of the Walworth Avenue Street, stormwater, sewer, public signage, remediation of certain environmental conditions and other related improvements to the Walworth Junction housing sub-division.

# SPECIAL ASSESSMENT

This Ordinance is the second of three pieces of legislation being submitted in response to a petition received from owners comprising 33 lots within the Homearama site to assess the costs of the public infrastructure against the lots. The assessment will assess an estimated \$3,073,661.83 of eligible public infrastructure costs and associated financing costs over a 15-year period. The estimated per lot assessment is \$10,000 per year per lot. The remaining 6 lots have prefunded their associated public infrastructure costs.

City Council previously approved Legislative Resolution 23-2021 declaring the necessity of the assessment on March 15, 2021. Upon passage of this ordinance and the corresponding assessment ordinance, the legislative process for the Special Assessment will be completed. There will be additional legislation forthcoming regarding the public infrastructure financing legislation in cooperation with the Port Authority for this project

# **RECOMMENDATION**

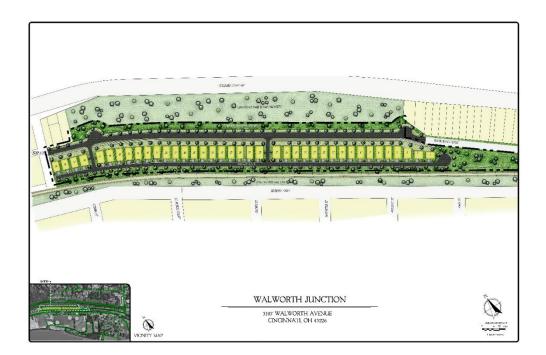
The Administration recommends approval of this Emergency Ordinance. The reason for the emergency clause is to facilitate the completion of the project and construction of all of the homes at the earliest possible time.

Attachment: A. Proposed Site Plan

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

Ordinance Determining to Proceed Walworth Junction-East End Development, LLC Page **3** of 3

# Attachment A: Site Plan



# EMERGENCY City of Cincinnati An Ordinance No.

SSB BUG

- 2021

**DETERMINING** to proceed with improving Walworth Avenue in the East End neighborhood of Cincinnati by constructing an extension thereto, together with curbs, street lighting, streetscaping, sidewalks, water mains, and storm and sanitary sewer; necessary remediation of soil in the related right-of-way; installing retaining walls; acquiring land necessary to construct and install the foregoing; and acquiring, constructing, and installing other related improvements, and of assessing certain lots adjacent to Walworth Avenue, as extended, for costs of those improvements, in accordance with Chapter 727 of the Ohio Revised Code.

WHEREAS, on March 17, 2021, Council adopted a resolution (the "Resolution") (i) declaring the necessity of improving Walworth Avenue by constructing an extension thereto. together with curbs, street lighting, streetscaping, sidewalks, water mains, and storm and sanitary sewer; remediation of soil in the related right-of-way; installing retaining walls; acquiring land necessary to construct and install the foregoing; and acquiring, constructing, and installing other related improvements (the "Public Infrastructure Improvements") and of assessing certain lots for the costs of the Public Infrastructure Improvements; (ii) accepting the petition of the owners of 100% of the lands benefitted and to be assessed requesting the Public Infrastructure Improvements, which is presently on file with the Clerk of Council (the "Petition"); and (iii) determining, among other things, that (a) the Public Infrastructure Improvements should be treated as a single improvement, (b) the "Assessable Cost" (as defined and described in the Petition) should be paid in the amount of \$3,073,661.83, together with interest and financing costs, from assessments levied for the Public Infrastructure Improvements against the assessed property (the "Special Assessments"), and (c) the City intends to cooperate with the Port of Greater Cincinnati Development Authority (the "Port Authority") to issue bonds or other indebtedness of the Port Authority to provide for the up-front costs of the Public Infrastructure Improvements, which indebtedness will be repaid via the collection of the Special Assessments; and

WHEREAS, pursuant to the Resolution, the estimated Special Assessments were prepared and placed on file in the Office of the Clerk of Council; and

WHEREAS, 100% of the owners of the lots and lands to be assessed waived, among other things, any further notice required by law in connection with the Public Infrastructure Improvements, and the right to object to and make claims for damages alleged to result from the Public Infrastructure Improvements; now, therefore,

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

Section 1. That Council determines to proceed with improving Walworth Avenue by

constructing an extension thereto, together with curbs, street lighting, streetscaping, sidewalks,

water mains, and storm and sanitary sewer; necessary remediation of soil in the related right-ofway; installing retaining walls; acquiring land necessary to construct and install the foregoing; and acquiring, constructing, and installing other related improvements (the "Public Infrastructure Improvements"), as further described in the petition for the Public Infrastructure Improvements received from the owners of 100% of the lots and lands to be assessed and on file with the Clerk of Council (the "Petition") and the plans, specifications, and profiles included therewith.

Section 2. That the Public Infrastructure Improvements shall be made in accordance with the provisions of the Resolution declaring the necessity of making the Public Infrastructure Improvements, which was adopted by this Council on March 17, 2021 (the "Resolution"), and in accordance with the plans, specifications, profiles, and estimates of cost of the Public Infrastructure Improvements, approved pursuant to the Resolution and now on file in the office of the Clerk of Council.

Section 3. That the portion of the "Assessable Cost" (as defined in the Resolution) of the Public Infrastructure Improvements to be assessed shall be \$3,073,661.83, together with interest and financing costs, and that this amount shall be assessed on the properties described in the Resolution and payable in 30 semi-annual installments or otherwise in the manner determined by the Hamilton County Treasurer, all as further described and provided in the Resolution.

Section 4. That the City intends to cooperate with the Port of Greater Cincinnati Development Authority (the "Port Authority") to facilitate the issuance by the Port Authority of bonds or other indebtedness to pay for the up-front costs of the Public Infrastructure Improvements, a portion of which bonds or other indebtedness the City anticipates will be repaid via the special assessments collected.

Section 5. That Council adopts and approves the estimated assessments heretofore prepared and filed in the office of the Clerk of Council, as set forth in the Resolution.

2

Section 6. That Council, in compliance with Ohio Revised Code ("ORC") Section 319.61, hereby authorizes the proper City officials to deliver a certified copy of this ordinance to the Hamilton County Auditor within 15 days after the date of passage hereof.

Section 7. That no claims for damages have been filed pursuant to ORC Section 727.18 or shall be inquired into before commencing and completing the Public Infrastructure Improvements, and the right to make such claims has been waived by the owners of 100% of the lots and lands to be assessed.

Section 8. That Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including the Charter of the City and ORC Section 121.22.

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 the construction contemplated hereby to proceed as scheduled and to effectuate the improvement of the City's transportation network and increase the amount of developable land within Cincinnati as soon as possible.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest: \_\_\_\_

Clerk



March 24, 2021

To:	Mayor and Members of City Council	202101192
From:	Paula Boggs Muething, City Manager	
Subject:	COMMUNITY REINVESTMENT AREA TAX EXEMPTI AGREEMENT FOR 64 E. MCMICKEN LLC	ON

Attached is an Emergency Ordinance captioned as follows:

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with 64 E McMicken LLC, an affiliate of Northcrown Property LLC thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 64 E. McMicken Avenue in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the existing building into approximately 1,370 square feet of commercial space and approximately 4,003 square feet of residential space, consisting of 6 apartments, at a total construction cost of approximately \$919,178.

# **BACKGROUND/CURRENT CONDITIONS**

This property is a multi-story vacant building in the Over-the-Rhine neighborhood of Cincinnati. It is within the OTR Historic District. The property is within walking distance to Grant Park. The Developer submitted a CRA application to DCED requesting assistance in the redevelopment of this property.

# **DEVELOPER INFORMATION**

64 E. McMicken LLC is an entity affiliate of Northcrown Property LLC, a neighborhood developer, who primarily redevelops vacant buildings in the Over the Rhine neighborhood surrounding Grant Park. In the past, they have stabilized the historic Crown Brewery Building located at 131 E. McMicken and have multiple projects underway north along E. McMicken.

CRA Tax Exemption 64 E. McMicken LLC. Page 2 of 3

# **PROJECT DESCRIPTION**

Once completed, this project will consist of 6 apartment units and 1,370 square feet of commercial space. Rent will range between \$938-\$1,498 per month depending on the square footage of the unit (ranging from 469-899 square feet). In connection with this project, it is estimated that 20 temporary construction jobs are created at a total annual payroll of \$750,000.

This 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**

The Ordinance provides for a 100% (net 52%), 15-year CRA tax exemption for this property. The exemption applies only to the increase in value of the building attributable to the project improvements. Pursuant to the Commercial CRA policy established by City Council, this project is located within the Streetcar VTICA Area and is therefore subject to analysis based on project underwriting, VTICA contribution, and job creation to determine abatement terms.

The administration is recommending a 15 year CRA term to allow for the project to secure adequate construction and permanent financing using the realized savings. This project will result in a more vibrant commercial district along the McMicken corridor and bring much needed housing to the northern section of Over the Rhine.

CRA Tax Exemption 64 E. McMicken LLC. Page **3** of 3

SUMMARY	
Forgone Public Benefit if Project Does not Proceed	
CPS PILOT (Forgone New Revenue)	(\$56,327)
VTICA (Forgone New Revenue)	(\$25,603)
Income Tax (Forgone New Revenue)	(\$27,825)
Total Public Benefit Lost	(\$109,755)
Incentive Value	
Annual Net Incentive to Developer	\$8,876
Total Term Incentive to Developer	\$88,758
City's Portion of Property Taxes Forgone	\$22,029
Public Benefit	
CPS PILOT	
Annual CPS Pilot	\$5,633
Total Term CPS PILOT	\$56,327
VTICA	
Annual VTICA	\$2,560
Total Term VTICA	\$25,603
Income Tax (Max)	\$27,825
Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$109,755
Total Public Benefit ROI*	\$1.24
City's ROI*	\$4.98

## **RECOMMENDATION**

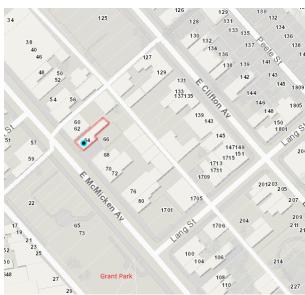
The Administration recommends approval of this Emergency Ordinance. The emergency clause in the Ordinance is required for the developer to maintain a strict project schedule.

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 An Ordinance No.\_\_\_

JML BNG

2021

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with 64 E. McMicken LLC, an affiliate of Northcrown Property LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 64 E. McMicken Avenue in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the existing building into approximately 1,370 square feet of commercial space and approximately 4,003 square feet of residential space, consisting of 6 apartments, at a total construction cost of approximately \$919,178.

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 ("ORC") 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, sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; 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, 64 E. McMicken LLC (the "Company") desires to remodel an existing building located on real property at 64 E. McMicken Avenue located within the corporate boundaries of the City of Cincinnati into approximately 1,370 square feet of commercial space and approximately 4,0003 square feet of residential space, consisting of 6 apartments (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*, 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; 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 ORC 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 with 64 E. McMicken 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 64 E. McMicken Avenue in Cincinnati, as calculated by the Hamilton County Auditor, in

connection with the remodeling of the existing building into approximately 1,370 square feet of

commercial space and approximately 4,003 square feet of residential space, consisting of 6

apartments, to be completed at a total construction cost of approximately \$919,178.

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
- 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, 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: \_\_\_\_\_\_, 2021

John Cranley, Mayor

Attest:

Clerk

# Attachment A to Ordinance

CRA Tax Exemption Agreement

# SEE ATTACHED

.

## Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "<u>Agreement</u>") 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 "<u>City</u>"), and 64 E. MCMICKEN LLC, an Ohio limited liability company and affiliate of Northcrown Property LLC (the "<u>Company</u>").

#### **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 "<u>Statute</u>").
- 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 "<u>Commercial Policy Ordinance</u>"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 64 E. McMicken Ave., 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.
- E. The Company has proposed to remodel the existing building located on the Property, 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.
- F. 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.
- G. 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.
- H. The Company has submitted to the City an application for this tax exemption agreement (the "<u>Application</u>"), a copy of which is attached hereto as <u>Exhibit B</u>, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$<u>1,250</u>) 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.

- 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.
- J. 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.
- K. 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").
- L. 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 "<u>State</u>").
- M. The Company represents that within the past five (5) years neither the Company, nor 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.
- N. 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.
- O. 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.
- P. The Company acknowledges that Streetcar operations in the Central Business District and Overthe-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.
- Q. 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.

- R. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2021, passed by Cincinnati City Council on \_\_\_\_\_, 2021.
- S. 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 on the Property into approximately 4,003 square feet of residential space consisting of six (6) apartment units and 1,370 square feet of commercial space (the "Improvements") at an estimated aggregate cost of \$919,178 to commence after the execution of this Agreement and to be completed no later than April 1, 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 remodeling shall be in compliance with applicable building code requirements and zoning regulations. 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.

Real Property Tax Exemption. Subject to the satisfaction of the conditions set Section 2. forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (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 fifteen (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 and (D) 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 <u>assessed</u>, as opposed to years in which taxes are <u>billed</u>. No exemption shall commence after tax year 2022 nor extend beyond the <u>earlier</u> of (i) tax year 2036 or (ii) the end of the 15<sup>th</sup> year of exemption.

Section 3. <u>Use: Maintenance: Inspections</u>. 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. <u>Compliance with Board of Education Agreement</u>. 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. <u>Duty of Company to Pay Taxes</u>. 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. <u>Company Certifications Regarding Non-Delinquency of Tax Obligations</u>. 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.

Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Section 7. 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. <u>City Cooperation</u>. 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. <u>Continuation of Exemptions</u>. 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. <u>City Not Liable</u>. 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.<sup>1</sup>

A. <u>Compliance with Small Business Enterprise Program</u>. 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 ("<u>CMC</u>") Section 323-1-S, "<u>SBEs</u>"). 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-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.

(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. <u>Remedies for Noncompliance with Small Business Enterprise Program</u>. 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

<sup>&</sup>lt;sup>1</sup> 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.

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. <u>Jobs</u>. The Company represents that, as of the date of the execution of this Agreement, (i) the Company has three existing full-time employment positions with an annual payroll of approximately \$95,000 at the Property (the "<u>Retained Jobs</u>") and (ii) the Company has no other existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. <u>Jobs to be Retained by Company</u>. The Company agrees to use its best efforts to retain the Retained Jobs in connection with the Project.

B. <u>Jobs to be Created by Company</u>. The Company agrees to use its best efforts to create 20 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.

C. <u>Company's Estimated Payroll Increase</u>. The Company's increase in the number of employees will result in approximately \$750,000.00 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

D. <u>Community Reinvestment Area Employment</u>. 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.

E. <u>Posting Available Employment Opportunities</u>. 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. <u>Equal Employment Opportunity</u>. 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. <u>Compliance with Immigration and Nationality Act</u>. 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. <u>Default</u>. 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. <u>Annual Review and Report</u>. 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 "<u>Annual Review and Report</u>"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

## Section 18. <u>Revocation</u>.

Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer Α 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. <u>Prior Statutory Violations</u>. 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. <u>Generally</u>. 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.

Material Representations - Board of Education Agreement and VTICA. The Β. 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. <u>Conflict of Interest</u>. 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. <u>Annual Fee</u>. 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. <u>Discontinued Operations</u>. 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. <u>Notices</u>. 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:

64 E. McMicken LLC Attention: Jeremy Moore, Chief Operating Officer 131 E. McMicken Avenue Cincinnati, Ohio 45202

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. <u>Acknowledgment of City Participation</u>. 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. <u>Entire Agreement</u>. 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. <u>Governing Law</u>. 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. <u>Waiver</u>. 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. <u>Severability</u>. 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. <u>Amendment</u>. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. <u>Non-Assignment</u>. 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. <u>Recording</u>. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. <u>Legislative Action Required</u>. 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. <u>Additional Representations and Warranties of Company</u>. 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. <u>Certification as to Non-Debarment</u>. 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. <u>Appeals</u>. 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. <u>Wage Enforcement</u>.

(i) <u>Applicability</u>. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "<u>Wage Enforcement Chapter</u>"). 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) <u>Required Contractual Language</u>. 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 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. <u>Legal Requirements</u>. 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. <u>Counterparts and Electronic Signatures</u>. 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 64 E. MCMICKEN LLC, an Ohio limited liability company

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

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

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

Printed Name:

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

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

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

Co NS Parcel No. 94-5(298 & 299 Cons.) 64 E. McMicken Avenue, Cincinnati, Ohio Prior Instrument Reference: Official Rocord Book 13688, Page 1365

Situate in the City of Cincinnati, County of Hamilton and State of Ohio:

Being all of Lot Eight (8) and the easterly twenty-three (23) feet of Lot Nine (9) of the subdivision by the executors of James Findlay, deceased, of Block 2 of Findlay and Ludlow's Subdivision as recorded in Deed Book 70, Page 134, Recorder's office, Hamilton County, Ohio.

# Exhibit B to CRA Agreement

## APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

# Attachment A to Ordinance

CRA Tax Exemption Agreement

# SEE ATTACHED

## **Community Reinvestment Area Tax Exemption Agreement**

This Community Reinvestment Area Tax Exemption Agreement (this "<u>Agreement</u>") 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 "<u>City</u>"), and 64 E. MCMICKEN LLC, an Ohio limited liability company and affiliate of Northcrown Property LLC (the "<u>Company</u>").

#### **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 "<u>Statute</u>").
- 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 "<u>Commercial Policy Ordinance</u>"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 64 E. McMicken Ave., 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.
- E. The Company has proposed to remodel the existing building located on the Property, 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.
- F. 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.
- G. 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.
- H. The Company has submitted to the City an application for this tax exemption agreement (the "<u>Application</u>"), a copy of which is attached hereto as <u>Exhibit B</u>, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$<u>1,250</u>) 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 (\$<u>750</u>) made payable to the Ohio Development Services Agency ("<u>ODSA</u>"), to be forwarded to the ODSA with an executed copy of this Agreement.

- I. 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.
- J. 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.
- K. 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").
- L. 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 "<u>State</u>").
- M. The Company represents that within the past five (5) years neither the Company, nor 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.
- N. 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.
- O. 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 ("<u>VTICA</u>") 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 "<u>VTICA Contribution</u>"), 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.
- P. The Company acknowledges that Streetcar operations in the Central Business District and Overthe-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.
- Q. 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.

- R. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2021, passed by Cincinnati City Council on \_\_\_\_\_, 2021.
- S. 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:

Project. Upon issuance of the necessary zoning and building approvals, the Section 1. Company agrees to remodel the existing building on the property on the Property into approximately 4,003 square feet of residential space consisting of six (6) apartment units and 1,370 square feet of commercial space (the "Improvements") at an estimated aggregate cost of \$919,178 to commence after the execution of this Agreement and to be completed no later than April 1, 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 remodeling shall be in compliance with applicable building code requirements and zoning regulations. 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.

Real Property Tax Exemption. Subject to the satisfaction of the conditions set Section 2. forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (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 fifteen (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 and (D) 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 <u>assessed</u>, as opposed to years in which taxes are <u>billed</u>. No exemption shall commence after tax year 2022 nor extend beyond the <u>earlier</u> of (i) tax year 2036 or (ii) the end of the 15<sup>th</sup> year of exemption.

Section 3. <u>Use; Maintenance; Inspections</u>. 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. <u>Compliance with Board of Education Agreement</u>. 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. <u>Duty of Company to Pay Taxes</u>. 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. <u>Company Certifications Regarding Non-Delinquency of Tax Obligations</u>. 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. <u>City Cooperation</u>. 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. <u>Continuation of Exemptions</u>. 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. <u>City Not Liable</u>. 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.<sup>1</sup>

A. <u>Compliance with Small Business Enterprise Program</u>. 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 ("<u>CMC</u>") Section 323-1-S, "<u>SBEs</u>"). 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-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.

(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. <u>Remedies for Noncompliance with Small Business Enterprise Program</u>. 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

<sup>&</sup>lt;sup>1</sup> 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.

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. <u>Jobs</u>. The Company represents that, as of the date of the execution of this Agreement, (i) the Company has three existing full-time employment positions with an annual payroll of approximately \$95,000 at the Property (the "<u>Retained Jobs</u>") and (ii) the Company has no other existing employment at the Property or in the State.

Section 13. Job Creation and Retention.

A. <u>Jobs to be Retained by Company</u>. The Company agrees to use its best efforts to retain the Retained Jobs in connection with the Project.

B. <u>Jobs to be Created by Company</u>. The Company agrees to use its best efforts to create 20 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.

C. <u>Company's Estimated Payroll Increase</u>. The Company's increase in the number of employees will result in approximately \$750,000.00 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

D. <u>Community Reinvestment Area Employment</u>. 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.

E. <u>Posting Available Employment Opportunities</u>. 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. <u>Equal Employment Opportunity</u>. 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. <u>Compliance with Immigration and Nationality Act</u>. 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. <u>Default</u>. 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. <u>Annual Review and Report</u>. 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 "<u>Annual Review and Report</u>"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

### Section 18. <u>Revocation</u>.

Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer Α. 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. <u>Prior Statutory Violations</u>. 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 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. <u>Generally</u>. 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.

Material Representations - Board of Education Agreement and VTICA. The Β. 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. <u>Conflict of Interest</u>. 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. <u>Annual Fee</u>. 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. <u>Discontinued Operations</u>. 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. <u>Notices</u>. 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:

64 E. McMicken LLC Attention: Jeremy Moore, Chief Operating Officer 131 E. McMicken Avenue Cincinnati, Ohio 45202

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. <u>Acknowledgment of City Participation</u>. 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. <u>Entire Agreement</u>. 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. <u>Governing Law</u>. 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. <u>Waiver</u>. 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. <u>Severability</u>. 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. <u>Amendment</u>. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. <u>Non-Assignment</u>. 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. <u>Recording</u>. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. <u>Legislative Action Required</u>. 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. <u>Additional Representations and Warranties of Company</u>. 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. <u>Certification as to Non-Debarment</u>. 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. <u>Appeals</u>. 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. <u>Wage Enforcement</u>.

(i) <u>Applicability</u>. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "<u>Wage Enforcement</u> <u>Chapter</u>"). 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) <u>Required Contractual Language</u>. 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 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. <u>Legal Requirements</u>. 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. <u>Counterparts and Electronic Signatures</u>. 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 64 E. MCMICKEN LLC, an Ohio limited liability company

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

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

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

Printed Name:

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

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

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

Co NG S Parcel No. 94-5(298 & 299 Cons.) 64 E. McMicken Avenue, Cincinnati, Ohio Prior Instrument Reference: Official Rocord Book 13688, Page 1365

Situate in the City of Cincinnati, County of Hamilton and State of Ohio:

Being all of Lot Eight (8) and the easterly twenty-three (23) feet of Lot Nine (9) of the subdivision by the executors of James Findlay, deceased, of Block 2 of Findlay and Ludlow's Subdivision as recorded in Deed Book 70, Page 134, Recorder's office, Hamilton County, Ohio.

## Exhibit B to CRA Agreement

### APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

.



March 24, 2020

Subject:	ORDINANCE – LEVYING SPECIAL ASSESSMENTS - WAL	WORTH
From:	Paula Boggs Muething, City Manager	
To:	Mayor and Members of City Council	202101193

Attached is an Emergency Ordinance captioned as follows:

**LEVYING** special assessments to pay for the costs of improving Walworth Avenue in the East End neighborhood of Cincinnati by constructing an extension thereto, together with curbs, street lighting, streetscaping, sidewalks, water mains, and storm and sanitary sewer; necessary remediation of soil in the related right-of-way; installing retaining walls; acquiring land necessary to construct and install the foregoing; and acquiring, constructing, and installing other related improvements, and any financing and administrative expenses in connection therewith.

# **BACKGROUND/CURRENT CONDITIONS**

The project site is located at 3100 Walworth Avenue, Cincinnati in the East End neighborhood of Cincinnati. In total, the site includes 7.1410 acres of vacant, unimproved land where 39 single family lots have been created and construction has commenced on a number of the lots. The whole assembled site comprises the Homearama Development proposed by East End Developers LLC.

### **DEVELOPER INFORMATION**

East End Developers, LLC, an affiliate of Meierjohan Building Group – led by Thomas J. Ackermann and Ralph Meierjohan, will be the developing entity of the site. T.J. Ackermann and Ralph Meierjohan have each been developing and building communities in the Greater Cincinnati area for the past 30 years. Together they have a large wealth of knowledge and experience in the field of real estate development, construction, and project management. Upon completion of public improvements and site preparation, third party home builders will purchase parcels for single-family home development from East End Developers, LLC.

# **PROJECT DESCRIPTION**

Developer has remediated a contaminated brownfield site at 3101 Walworth Avenue in the East End neighborhood and prepared the site for the construction of 39 single

### Ordinance Levying the Assessments Walworth Junction-East End Development, LLC Page **2** of 3

family homes. This is the site of <u>Homearama @ Walworth Junction</u> in partnership with the Greater Cincinnati Home Builders Association. Developer will cause construction of the 39 single family homes; each home will consist of approximately 3,000 square feet of living space and range in sales price from \$800,000 to \$1,600,000. In addition, the Developer will be seeking LEED Neighborhood Development – a first in the City of Cincinnati – requiring all homes built in the subdivision to meet LEED Gold standards.

Developer will also construct several public infrastructure improvements. This includes sidewalks, extension of the Walworth Avenue Street, stormwater, sewer, public signage, remediation of certain environmental conditions and other related improvements to the Walworth Junction housing sub-division.

## SPECIAL ASSESSMENT

This Ordinance is the second of three pieces of legislation being submitted in response to a petition received from owners comprising 33 lots within the Homearama site to assess the costs of the public infrastructure against the lots. The assessment will assess an estimated \$3,073,661.83 of eligible public infrastructure costs and associated financing costs over a 15-year period. The estimated per lot assessment is \$10,000 per year per lot. The remaining 6 lots have prefunded their associated public infrastructure costs.

City Council previously approved Legislative Resolution 23-2021 declaring the necessity of the assessment on March 15, 2021. Upon passage of this ordinance and the corresponding determining to proceed ordinance, the legislative process for the Special Assessment will be completed. There will be additional legislation forthcoming regarding the public infrastructure financing legislation in cooperation with the Port Authority for this project

# **RECOMMENDATION**

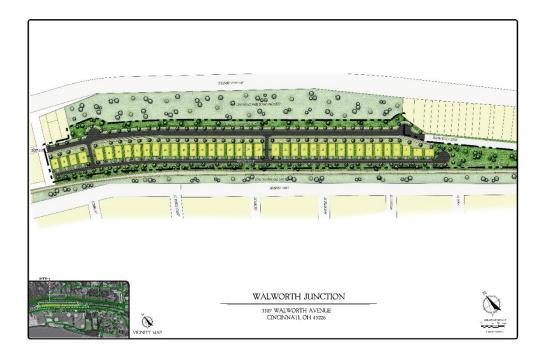
The Administration recommends approval of this Emergency Ordinance. The reason for the emergency clause is in order to facilitate the completion of the project and construction of all of the homes at the earliest possible time.

Attachment: A. Proposed Site Plan

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

Ordinance Levying the Assessment Walworth Junction-East End Development, LLC Page **3** of 3

# Attachment A: Site Plan



# EMERGENCY City of Cincinnati An Ordinance No.\_\_\_\_

SSB BUG

- 2021

**LEVYING** special assessments to pay for the costs of improving Walworth Avenue in the East End neighborhood of Cincinnati by constructing an extension thereto, together with curbs, street lighting, streetscaping, sidewalks, water mains, and storm and sanitary sewer; necessary remediation of soil in the related right-of-way; installing retaining walls; acquiring land necessary to construct and install the foregoing; and acquiring, constructing, and installing other related improvements, and any financing and administrative expenses in connection therewith.

WHEREAS, on March 17, 2021, Council adopted a resolution (the "Resolution") declaring the necessity of improving Walworth Avenue by constructing an extension thereto, together with curbs, street lighting, streetscaping, sidewalks, water mains, and storm and sanitary sewer; remediation of soil in the related right-of-way; installing retaining walls; acquiring land necessary to construct and install the foregoing; and acquiring, constructing, and installing other related improvements (the "Public Infrastructure Improvements"); and

WHEREAS, Council has, pursuant to Chapter 727 of the Ohio Revised Code and the Resolution, determined the necessity of levying and collecting assessments for the costs of the Public Infrastructure Improvements (the "Special Assessments"), as provided in Chapter 727 of the Ohio Revised Code; and

WHEREAS, on the date hereof, Council enacted an ordinance (the "Determination to Proceed") (i) determining to proceed with the construction of the Public Infrastructure Improvements; (ii) adopting the estimated Special Assessments with respect to the Public Infrastructure Improvements, as prepared and filed with the Clerk of Council; and (iii) indicating that the City intends, by separate ordinance, to authorize cooperation with the Port of Greater Cincinnati Development Authority (the "Port Authority") in the issuance of bonds or other indebtedness of the Port Authority to finance the Assessable Cost (as defined in the Resolution) of the Public Infrastructure Improvements; and

WHEREAS, there are no outstanding objections to the estimated Special Assessments, the right to object having been waived by 100% of the owners of the Assessed Property (as defined in the Resolution); now, therefore,

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

Section 1. That the list of assessments ("Special Assessments") of the Assessable Cost of

the Public Infrastructure Improvements (each as defined in the Resolution adopted by Council on

March 17, 2021, with respect to improvements to Walworth Avenue (the "Resolution")),

amounting in the aggregate to \$3,073,661.83, exclusive of interest thereon and administrative

expenses related thereto, as set forth in the Petition and as now on file in the office of the Clerk of Council, is hereby adopted and confirmed and there are hereby levied and assessed upon all of numbered lots 1 through 27, 29, 31 through 33, 36, and 38, included in the Assessed Property (as defined in the Resolution and as described and depicted on Exhibit A hereto) the amounts reported on such list of Special Assessments attached as Exhibit B hereto (the "Special Assessment Roll"), which includes the interest and financing costs. The Special Assessments with respect to each such lot within the Assessed Property shall be payable in 30 equal semi-annual installments commencing with the date on which the first installment of tax year 2022 real property taxes are due. The breakdown of the estimated assessments attached to the petition of the owner of the Assessed Property on file with the Clerk of Council (the "Petition") as Exhibit D thereto is hereby incorporated herein by reference.

Section 2. That Council further finds and determines that the Special Assessments which may be certified to the Hamilton County Auditor for collection are as set forth in the Special Assessment Roll attached hereto as Exhibit B. The appropriate officials from the City's Finance Department are (a) authorized to accept the Special Assessments from the appropriate County officials, deposit them into the appropriate account for the purpose of paying the costs of the Public Infrastructure Improvements, and disburse them for said purpose; and (b) authorized to take such other steps as are necessary to receive and process the Special Assessments.

Section 3. That Council hereby finds and determines that the Special Assessments are in proportion to the benefits received by each applicable lot within the Assessed Property, as set forth in the Special Assessment Roll, because each lot will benefit equally from access to the Public Infrastructure Improvements.

Section 4. That Council hereby finds and determines that all Special Assessments levied hereby shall be certified by the Clerk of Council or other appropriate City official to the Hamilton County Auditor as provided by law, to be placed by him or her on the tax duplicate and collected as other taxes are collected.

Section 5. That the City anticipates that it will cooperate with the Port of Greater Cincinnati Development Authority (the "Port Authority") to issue bonds or other indebtedness of the Port Authority to be repaid using the Special Assessments, which issuance will be authorized by a separate ordinance.

Section 6. That Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including the Charter of the City and Ohio Revised Code Section 121.22.

Section 7. 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 the construction contemplated hereby to proceed as scheduled and to effectuate the improvement of the City's transportation network and increase the amount of developable land within Cincinnati as soon as possible.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest: \_\_\_\_\_

Clerk

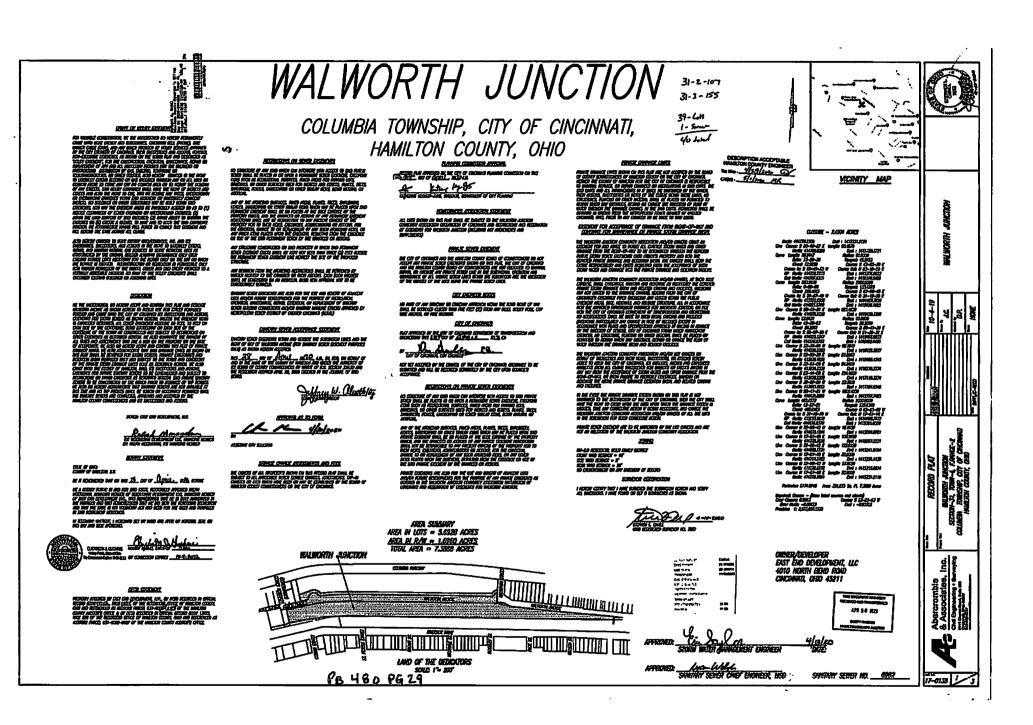
### EXHIBIT A

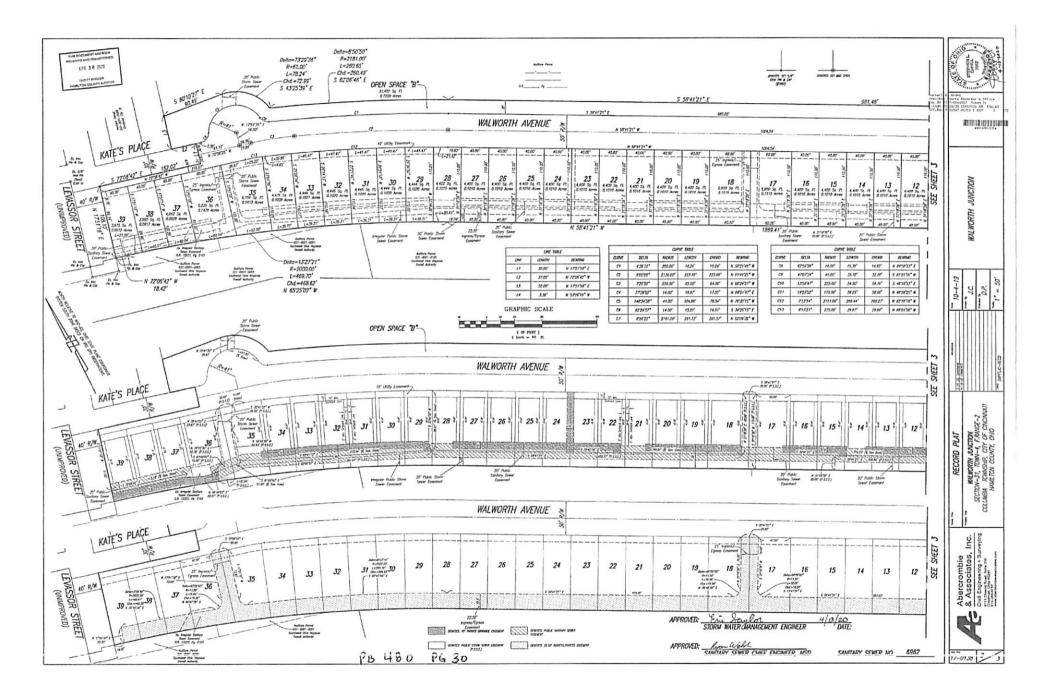
### DESCRIPTION OF PROPERTY

Situate in Section 31, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

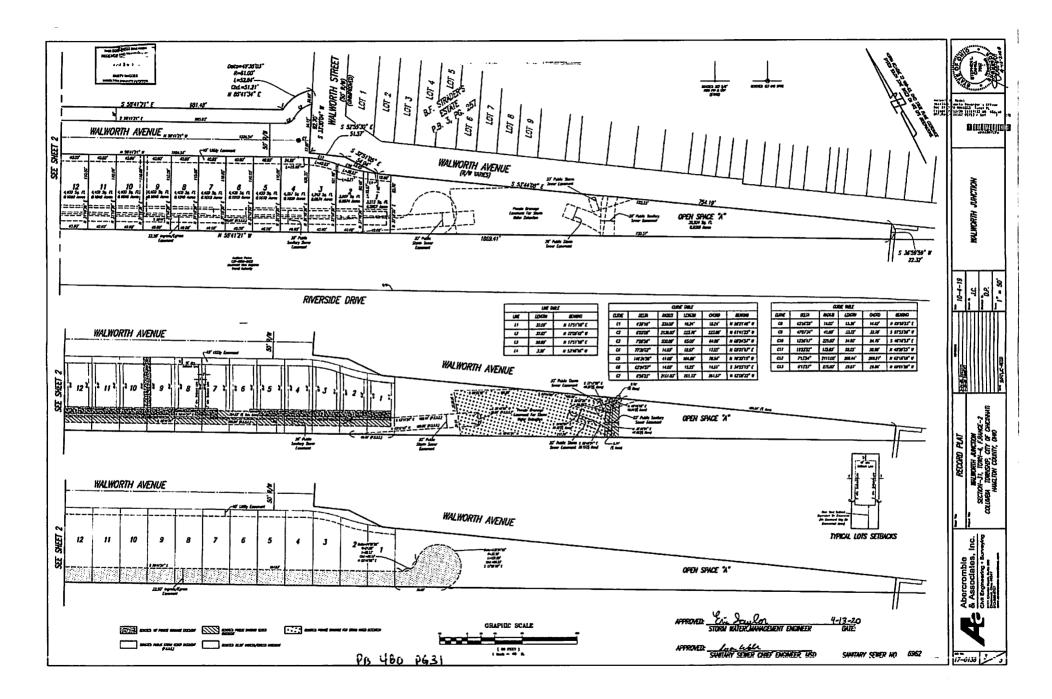
Being all of Lot Numbers 1-39, inclusive and Open Space Parcels A and B of Walworth Junction Subdivision as recorded in Plat Book 480, Pages 29 - 31 of the Hamilton County, Ohio Records.

Lot 1 Parcel No. 031-0002-0114 Lot 2 Parcel No. 031-0002-0115 Lot 3 Parcel No. 031-0002-0116 Lot 4 Parcel No. 031-0002-0117 Lot 5 Parcel No. 031-0002-0118 Lot 6 Parcel No. 031-0002-0119 Lot 7 Parcel No. 031-0002-0120 Lot 8 Parcel No. 031-0002-0121 Lot 9 Parcel No. 031-0002-0122 Lot 10 Parcel No. 031-0002-0123 Lot 11 Parcel No. 031-0002-0124 Lot 12 Parcel No. 031-0002-0125 Lot 13 Parcel No. 031-0002-0126 Lot 14 Parcel No. 031-0002-0127 Lot 15 Parcel No. 031-0002-0128 Lot 16 Parcel No. 031-0002-0129 Lot 17 Parcel No. 031-0002-0130 Lot 18 Parcel No. 031-0002-0131 Lot 19 Parcel No. 031-0002-0132 Lot 20 Parcel No. 031-0002-0133 Lot 21 Parcel No. 031-0002-0134 Lot 22 Parcel No. 031-0002-0135 Lot 23 Parcel No. 031-0002-0136 Lot 24 Parcel No. 031-0002-0137 Lot 25 Parcel No. 031-0002-0138 Lot 26 Parcel No. 031-0002-0139 Lot 27 Parcel No. 031-0002-0140 Lot 28 Parcel No. 031-0002-0141 Lot 29 Parcel No. 031-0002-0142 Lot 30 Parcel No. 031-0002-0143 Lot 31 Parcel No. 031-0002-0144 Lot 32 Parcel No. 031-0002-0145 Lot 33 Parcel No. 031-0002-0146 Lot 34 Parcel No. 031-0002-0147 Lot 35 Parcel No. 031-0002-0148 Lot 36 Parcel No. 031-0002-0149 Lot 37 Parcel No. 031-0002-0150 Lot 38 Parcel No. 031-0002-0151 Lot 39 Parcel No. 031-0002-0152 O. S. "A" Parcel No. O. S. "B" Parcel No.





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## EXHIBIT B

Α	В	a de la <b>C</b> onstanti de la constante	D
<u>Assessed</u> <u>Lands Lot</u> <u>Number</u> (lot number references refer to the numbered	<u>Aggregate</u> <u>Special</u> <u>Assessment</u>	Special Assessment By Lot (B / 33)	Semi-Annual Installment of Special Assessment (C / 30)
lots within the Walworth Junction Subdivision Plat shown in Exhibit C above)			( <i>i.e.</i> , this amount is to be paid 30 times over a 15 year period commencing with the payment of the first
			installment of the tax year 2022 tax bill)
1	\$4,950,000	\$150,000	\$5000.00
2	\$4,950,000	\$150,000	\$5000.00
3	\$4,950,000	\$150,000	\$5000.00
4	\$4,950,000	\$150,000	\$5000.00
5	\$4,950,000	\$150,000	\$5000.00
6	\$4,950,000	\$150,000	\$5000.00
7	\$4,950,000	\$150,000	\$5000.00
8	\$4,950,000	\$150,000	\$5000.00
9	\$4,950,000	\$150,000	\$5000.00
10	\$4,950,000	\$150,000	\$5000.00
11	\$4,950,000	\$150,000	\$5000.00
12	\$4,950,000	\$150,000	\$5000.00
13	\$4,950,000	\$150,000	\$5000.00
14	\$4,950,000	\$150,000	\$5000.00
15	\$4,950,000	\$150,000	\$5000.00
16	\$4,950,000	\$150,000	\$5000.00
17	\$4,950,000	\$150,000	\$5000.00
18	\$4,950,000	\$150,000	\$5000.00
19	\$4,950,000	\$150,000	\$5000.00
20	\$4,950,000	\$150,000	\$5000.00
21	\$4,950,000	\$150,000	\$5000.00

22	\$4,950,000	\$150,000	\$5000.00
23	\$4,950,000	\$150,000	\$5000.00
24	\$4,950,000	\$150,000	\$5000.00
25	\$4,950,000	\$150,000	\$5000.00
26	\$4,950,000	\$150,000	\$5000.00
27	\$4,950,000	\$150,000	\$5000.00
29	\$4,950,000	\$150,000	\$5000.00
31	\$4,950,000	\$150,000	\$5000.00
32	\$4,950,000	\$150,000	\$5000.00
33	\$4,950,000	\$150,000	\$5000.00
36	\$4,950,000	\$150,000	\$5000.00
38	\$4,950,000	\$150,000	\$5000.00

### EXHIBIT A

### DESCRIPTION OF PROPERTY

Situate in Section 31, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

Being all of Lot Numbers 1-39, inclusive and Open Space Parcels A and B of Walworth Junction Subdivision as recorded in Plat Book 480, Pages 29 - 31 of the Hamilton County, Ohio Records.

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Lot 21 Parcel No. 031-0002-0134 Lot 22 Parcel No. 031-0002-0135 Lot 23 Parcel No. 031-0002-0136 Lot 24 Parcel No. 031-0002-0137 Lot 25 Parcel No. 031-0002-0138 Lot 26 Parcel No. 031-0002-0139 Lot 27 Parcel No. 031-0002-0140 Lot 28 Parcel No. 031-0002-0141 Lot 29 Parcel No. 031-0002-0142 Lot 30 Parcel No. 031-0002-0143 Lot 31 Parcel No. 031-0002-0144 Lot 32 Parcel No. 031-0002-0145 Lot 33 Parcel No. 031-0002-0146 Lot 34 Parcel No. 031-0002-0147 Lot 35 Parcel No. 031-0002-0148 Lot 36 Parcel No. 031-0002-0149 Lot 37 Parcel No. 031-0002-0150 Lot 38 Parcel No. 031-0002-0151 Lot 39 Parcel No. 031-0002-0152 O. S. "A" Parcel No. O. S. "B" Parcel No.

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AREA SUMMARY

AREA IN LOTS = 5.6928 ACRES

AREA IN R/W = 1.6960 ACRES TOTAL AREA = 7.3888 ACRES

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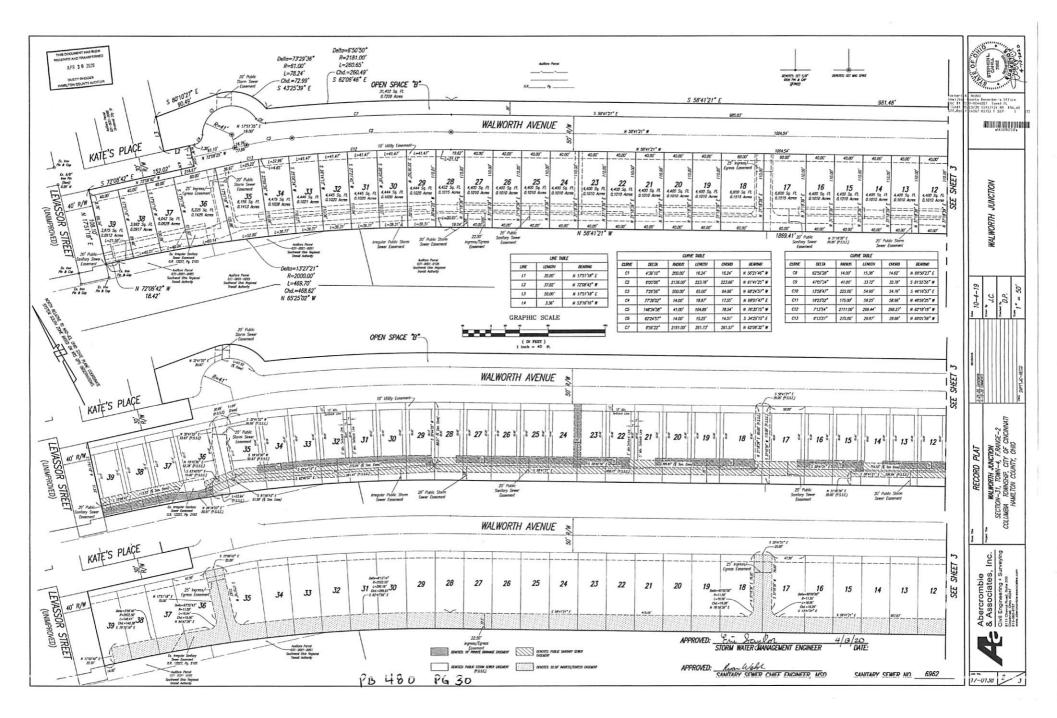
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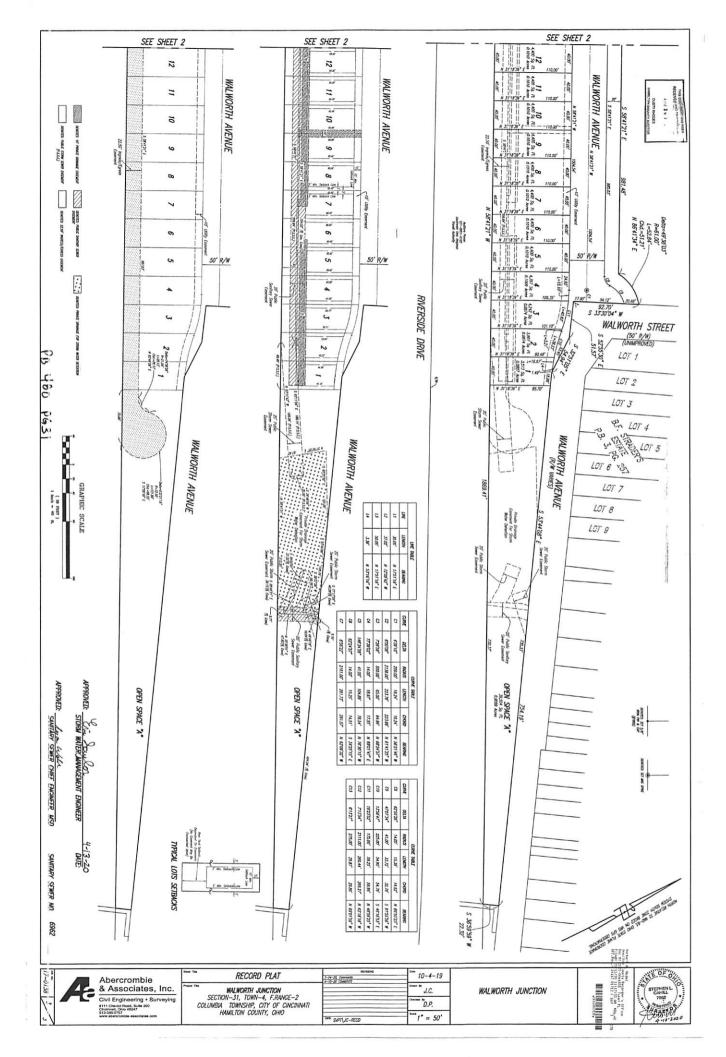
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VICINITY MAP





# EXHIBIT B

А	В	C	D
<u>Assessed</u> <u>Lands Lot</u> <u>Number</u> (lot number references refer to the numbered lots within the Walworth Junction Subdivision Plat shown in Exhibit C above)	<u>Aggregate</u> <u>Special</u> <u>Assessment</u>	Special Assessment By Lot (B / 33)	Semi-Annual Installment of Special Assessment (C / 30) ( <i>i.e.</i> , this amount is to be paid 30 times over a 15 year period commencing with the payment of the first installment of the tax year 2022 tax bill)
1	\$4,950,000	\$150,000	\$5000.00
2	\$4,950,000	\$150,000	\$5000.00
3	\$4,950,000	\$150,000	\$5000.00
4	\$4,950,000	\$150,000	\$5000.00
5	\$4,950,000	\$150,000	\$5000.00
6	\$4,950,000	\$150,000	\$5000.00
7	\$4,950,000	\$150,000	\$5000.00
8	\$4,950,000	\$150,000	\$5000.00
9	\$4,950,000	\$150,000	\$5000.00
10	\$4,950,000	\$150,000	\$5000.00
11	\$4,950,000	\$150,000	\$5000.00
12	\$4,950,000	\$150,000	\$5000.00
13	\$4,950,000	\$150,000	\$5000.00
14	\$4,950,000	\$150,000	\$5000.00
15	\$4,950,000	\$150,000	\$5000.00
16	\$4,950,000	\$150,000	\$5000.00
17	\$4,950,000	\$150,000	\$5000.00
18	\$4,950,000	\$150,000	\$5000.00
19	\$4,950,000	\$150,000	\$5000.00
20	\$4,950,000	\$150,000	\$5000.00
21	\$4,950,000	\$150,000	\$5000.00

22	\$4,950,000	\$150,000	\$5000.00
23	\$4,950,000	\$150,000	\$5000.00
24	\$4,950,000	\$150,000	\$5000.00
25	\$4,950,000	\$150,000	\$5000.00
26	\$4,950,000	\$150,000	\$5000.00
27	\$4,950,000	\$150,000	\$5000.00
29	\$4,950,000	\$150,000	\$5000.00
31	\$4,950,000	\$150,000	\$5000.00
32	\$4,950,000	\$150,000	\$5000.00
33	\$4,950,000	\$150,000	\$5000.00
36	\$4,950,000	\$150,000	\$5000.00
38	\$4,950,000	\$150,000	\$5000.00



March 24, 2021

To:	Mayor and Members of City Council	202101194
From:	Paula Boggs Muething, City Manager	
Subject:	COMMUNITY REINVESTMENT AREA TAX EXEMPTI AGREEMENT FOR 116 E. MCMICKEN LLC	ON

Attached is an Emergency Ordinance captioned as follows:

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with 116 E McMicken LLC, an affiliate of Northcrown Property LLC thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 116 E. McMicken Avenue in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the existing building into approximately 549 square feet of commercial space and approximately 5,183 square feet of residential space, consisting of 10 residential rental units, at a total construction cost of approximately \$869,325.

# **BACKGROUND/CURRENT CONDITIONS**

This property is a multi-story vacant building in the Over-the-Rhine neighborhood of Cincinnati. It is within the OTR Historic District. The property is within walking distance to Grant Park. The Developer submitted a CRA application to DCED requesting assistance in the redevelopment of this property.

# **DEVELOPER INFORMATION**

116 E. McMicken LLC is an entity affiliate of Northcrown Property LLC, a neighborhood developer, who primarily redevelops vacant buildings in the Over the Rhine neighborhood surrounding Grant Park. In the past, they have stabilized the historic Crown Brewery Building located at 131 E. McMicken and have multiple projects underway north along E. McMicken.

CRA Tax Exemption 116 E McMicken, LLC Page 2 of 3

# **PROJECT DESCRIPTION**

Once completed, this project will consist of ten 1-bedroom apartment units and 549 square feet of commercial space. Rent will range between \$724-\$1,296 per month depending on the square footage of the unit (ranging from 441-864 square feet). In connection with this project, it is estimated that 20 temporary construction jobs are created at a total annual payroll of \$750,000.

This 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

The Ordinance provides for a 100% (net 52%), 15-year CRA tax exemption for this property. The exemption applies only to the increase in value of the building attributable to the project improvements. Pursuant to the Commercial CRA policy established by City Council, this project is located within the Streetcar VTICA Area and is therefore subject to analysis based on project underwriting, VTICA contribution, and job creation to determine abatement terms.

The administration is recommending a 15 year CRA term to allow for the project to secure adequate construction and permanent financing using the realized savings. This project will result in a more vibrant commercial district along the McMicken corridor and bring much needed housing to the northern section of Over the Rhine.

Forgone Public Benefit if Project Does not Proceed	
	(\$70.000
CPS PILOT (Forgone New Revenue)	(\$79,908
VTICA (Forgone New Revenue)	(\$36,322
Income Tax (Forgone New Revenue)	(\$45,675
Total Public Benefit Lost	(\$161,905
Incentive Value	
Annual Net Incentive to Developer	\$8,394
Total Term Incentive to Developer	\$125,916
City's Portion of Property Taxes Forgone	\$31,252
Public Benefit	
CPS PILOT	
Annual CPS Pilot	\$5,327
Total Term CPS PILOT	\$79,908
VTICA	
Annual VTICA	\$2,421
Total Term VTICA	\$36,322
Income Tax (Max)	\$45,675
Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$161,905
Total Public Benefit ROI*	\$1.29
City's ROI*	\$5.18

CRA Tax Exemption 116 E McMicken, LLC Page **3** of 3

## **RECOMMENDATION**

The Administration recommends approval of this Emergency Ordinance. The emergency clause in the Ordinance is required for the developer to maintain a strict project schedule.

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 An Ordinance No.\_\_\_

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2021

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with 116 E McMicken LLC, an affiliate of Northcrown Property LLC thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 116 E. McMicken Avenue in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the existing building into approximately 549 square feet of commercial space and approximately 5,183 square feet of residential space, consisting of 10 residential rental units, at a total construction cost of approximately \$869,325.

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 ("ORC") 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, 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, 116 E McMicken LLC (the "Company") desires to remodel an existing building located at 116 E. McMicken Avenue located within the corporate boundaries of the City of Cincinnati into approximately 549 square feet of commercial space and approximately 5,183 square feet of residential space, consisting of 10 residential rental units (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*, 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; 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 ORC 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 with 116 E McMicken 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

116 E. McMicken Avenue in Cincinnati, as calculated by the Hamilton County Auditor, in

connection with the remodeling of the existing building into approximately 549 square feet of

commercial space and approximately 5,183 square feet of residential space, consisting of 10

residential rental units, to be completed at a total construction cost of approximately \$869,325.

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

John Cranley, Mayor

Attest: \_\_\_\_\_

## Attachment A to Ordinance

CRA Tax Exemption Agreement

# SEE ATTACHED

#### Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "<u>Agreement</u>") 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 "<u>City</u>"), and 116 E MCMICKEN LLC, Ohio limited liability company (the "<u>Company</u>") an affiliate of Northcrown Property LLC.

#### **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 "<u>Commercial Policy Ordinance</u>"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 116 E. McMicken Avenue, 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.
- E. The Company has proposed to remodel a building located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "<u>Project</u>"), provided that the appropriate development incentives are available to support the economic viability of the Project.
- F. 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.
- G. 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.
- H. The Company has submitted to the City an application for this tax exemption agreement (the "<u>Application</u>"), a copy of which is attached hereto as <u>Exhibit B</u>, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$<u>1,250</u>) 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.

- I. 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.
- J. 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.
- K. 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").
- L. 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 "<u>State</u>").
- M. 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.
- N. 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.
- O. 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 ("<u>VTICA</u>") 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 "<u>VTICA</u> <u>Contribution</u>"), 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.
- P. The Company acknowledges that Streetcar operations in the Central Business District and Overthe-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.
- Q. 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.
- R. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2021, passed by Cincinnati City Council on \_\_\_\_\_, 2021.

S. 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:

Project. Upon issuance of the necessary zoning and building approvals, the Section 1. Company agrees to remodel the existing building into approximately 5,183 square feet of residential space. consisting of 10 residential rental units, and approximately 549 square feet of commercial space on the Property (the "Improvements") at an estimated aggregate cost of Eight Hundred Sixty-Nine Thousand, Three Hundred Twenty-Five Dollars (\$869,325) to commence after the execution of this Agreement and to be completed no later than January 1, 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 remodeling shall be in compliance with applicable building code requirements and zoning regulations. 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.

Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth Section 2. in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (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 fifteen (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 and (D) 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 <u>assessed</u>, as opposed to years in which taxes are <u>billed</u>. No exemption shall commence after tax year 2022 nor extend beyond the <u>earlier</u> of (i) tax year 2036 or (ii) the end of the fifteenth (15<sup>th</sup>) year of exemption.

Section 3. <u>Use: Maintenance: Inspections</u>. 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. <u>Compliance with Board of Education Agreement</u>. 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. <u>Duty of Company to Pay Taxes</u>. 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. <u>Company Certifications Regarding Non-Delinquency of Tax Obligations</u>. 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. <u>Covenant of Satisfaction of Tax and Other Obligations</u>. 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 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. <u>City Cooperation</u>. 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. <u>Continuation of Exemptions</u>. 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. <u>City Not Liable</u>. 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.<sup>1</sup>

A. <u>Compliance with Small Business Enterprise Program</u>. 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 ("<u>CMC</u>") Section 323-1-S, "<u>SBEs</u>"). 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.

(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. <u>Remedies for Noncompliance with Small Business Enterprise Program</u>. 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.

<sup>&</sup>lt;sup>1</sup> 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.

Section 12. <u>Jobs</u>. 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. <u>Job Creation and Retention</u>.

A. <u>Jobs to be Created by Company</u>. The Company agrees to use its best efforts to create (i) 3 full-time permanent jobs, and (ii) 20 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. <u>Company's Estimated Payroll Increase</u>. The Company's increase in the number of employees will result in approximately (i) \$120,000 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$750,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. <u>Community Reinvestment Area Employment</u>. 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. <u>Posting Available Employment Opportunities</u>. 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. <u>Equal Employment Opportunity</u>. 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. <u>Compliance with Immigration and Nationality Act</u>. 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.

Default. As provided in Ohio Revised Code Section 3735.671(C)(6), if the Section 16. 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. <u>Annual Review and Report</u>. 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 "<u>Annual Review and Report</u>"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

#### Section 18. <u>Revocation</u>.

Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer Α. 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. <u>Prior Statutory Violations</u>. 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. <u>Generally</u>. 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 ( $\frac{1,000}{2}$ ) and/or a term of imprisonment of not more than six (6) months.

Material Representations - Board of Education Agreement and VTICA. The Β. 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. <u>Conflict of Interest</u>. 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. <u>Annual Fee</u>. 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. <u>Discontinued Operations</u>. 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. <u>Notices</u>. 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:

116 E McMicken LLC Attention: Jeremy Moore, Chief Operating Officer 131 E. McMicken Avenue, Cincinnati, Ohio 45202

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. <u>Acknowledgment of City Participation</u>. 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. <u>Entire Agreement</u>. 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. <u>Governing Law</u>. 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. <u>Waiver</u>. 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. <u>Severability</u>. 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. <u>Amendment</u>. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. <u>Non-Assignment</u>. 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. <u>Recording</u>. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. <u>Legislative Action Required</u>. 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. <u>Additional Representations and Warranties of Company</u>. 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. <u>Certification as to Non-Debarment</u>. 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. <u>Appeals</u>. 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. <u>Wage Enforcement</u>.

(i) <u>Applicability</u>. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "<u>Wage Enforcement</u> <u>Chapter</u>"). 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) <u>Required Contractual Language</u>. 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. <u>Legal Requirements</u>. 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. <u>Counterparts and Electronic Signatures</u>. 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 116 E MCMICKEN LLC, an Ohio limited liability company

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

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

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

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

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

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

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

#### Street Address: 116 E. McMicken Avenue, Cincinnati, Ohio 45202

Parcel ID No.: 094-0007-0244-00

Situate in Cincinnati, Hamilton County, Ohio, in Block 1 of Finlay & Ludlow's Subdivision, and described as follows:

Beginning at a point in the northerly line of McMicken Avenue 174.50 feet eastwardly from the northeast corner of Lang Street and McMicken Avenue; thence N. 47° 43' E. 120.77 feet to the southerly line of Hust Alley; thence S. 42° 41' E. 24 feet along said southerly line of Hust Alley; thence S. 47° 43' W. 121.05 feet to the northerly line of McMicken Avenue; thence N. 42° 01' W. 24 feet to the point of beginning.

## Exhibit B to CRA Agreement

APPLICATION FOR TAX EXEMPTION

## TO BE ATTACHED

## Attachment A to Ordinance

CRA Tax Exemption Agreement

# SEE ATTACHED

#### Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "<u>Agreement</u>") 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 "<u>City</u>"), and 116 E MCMICKEN LLC, Ohio limited liability company (the "<u>Company</u>") an affiliate of Northcrown Property LLC.

#### **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 "<u>Commercial Policy Ordinance</u>"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 116 E. McMicken Avenue, Cincinnati, Ohio 45202 (the "Property"), as further described in <u>Exhibit A</u> (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 "<u>Excluded Property</u>"), 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.
- E. The Company has proposed to remodel a building located on the Property, 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.
- F. 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.
- G. 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.
- H. The Company has submitted to the City an application for this tax exemption agreement (the "<u>Application</u>"), a copy of which is attached hereto as <u>Exhibit B</u>, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$<u>1,250</u>) 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 ("<u>ODSA</u>"), to be forwarded to the ODSA with an executed copy of this Agreement.

- I. 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.
- J. 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.
- K. 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").
- L. 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 "<u>State</u>").
- M. 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.
- N. 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.
- O. 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 ("<u>VTICA</u>") 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 "<u>VTICA</u> <u>Contribution</u>"), 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.
- P. The Company acknowledges that Streetcar operations in the Central Business District and Overthe-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.
- Q. 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.
- R. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2021, passed by Cincinnati City Council on \_\_\_\_\_, 2021.

S. 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:

Project. Upon issuance of the necessary zoning and building approvals, the Section 1. Company agrees to remodel the existing building into approximately 5,183 square feet of residential space, consisting of 10 residential rental units, and approximately 549 square feet of commercial space on the Property (the "Improvements") at an estimated aggregate cost of Eight Hundred Sixty-Nine Thousand, Three Hundred Twenty-Five Dollars (\$869,325) to commence after the execution of this Agreement and to be completed no later than January 1, 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 remodeling shall be in compliance with applicable building code requirements and zoning regulations. 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.

Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth Section 2. in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (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 fifteen (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 and (D) 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 <u>assessed</u>, as opposed to years in which taxes are <u>billed</u>. No exemption shall commence after tax year 2022 nor extend beyond the <u>earlier</u> of (i) tax year 2036 or (ii) the end of the fifteenth (15<sup>th</sup>) year of exemption.

Section 3. <u>Use: Maintenance: Inspections</u>. 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. <u>Compliance with Board of Education Agreement</u>. 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. <u>Duty of Company to Pay Taxes</u>. 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. <u>Company Certifications Regarding Non-Delinquency of Tax Obligations</u>. 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. <u>Covenant of Satisfaction of Tax and Other Obligations</u>. 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 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. <u>City Cooperation</u>. 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. <u>Continuation of Exemptions</u>. 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. <u>City Not Liable</u>. 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.<sup>1</sup>

A. <u>Compliance with Small Business Enterprise Program</u>. 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 ("<u>CMC</u>") Section 323-1-S, "<u>SBEs</u>"). 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.

(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. <u>Remedies for Noncompliance with Small Business Enterprise Program</u>. 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.

<sup>&</sup>lt;sup>1</sup> 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.

Section 12. <u>Jobs</u>. 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. <u>Jobs to be Created by Company</u>. The Company agrees to use its best efforts to create (i) 3 full-time permanent jobs, and (ii) 20 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. <u>Company's Estimated Payroll Increase</u>. The Company's increase in the number of employees will result in approximately (i) \$120,000 of additional annual payroll with respect to the full-time permanent jobs, and (ii) \$750,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. <u>Community Reinvestment Area Employment</u>. 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. <u>Posting Available Employment Opportunities</u>. 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. <u>Equal Employment Opportunity</u>. 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. <u>Compliance with Immigration and Nationality Act</u>. 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. <u>Annual Review and Report</u>. 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 "<u>Annual Review and Report</u>"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

#### Section 18. <u>Revocation</u>.

Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer Α. 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. <u>Prior Statutory Violations</u>. 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. <u>Generally</u>. 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 ( $\frac{1,000}{2}$ ) and/or a term of imprisonment of not more than six (6) months.

Material Representations - Board of Education Agreement and VTICA. The Β. 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. <u>Conflict of Interest</u>. 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. <u>Annual Fee</u>. 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. <u>Discontinued Operations</u>. 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. <u>Notices</u>. 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:

116 E McMicken LLC Attention: Jeremy Moore, Chief Operating Officer 131 E. McMicken Avenue, Cincinnati, Ohio 45202

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. <u>Acknowledgment of City Participation</u>. 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. <u>Entire Agreement</u>. 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. <u>Governing Law</u>. 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. <u>Waiver</u>. 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. <u>Severability</u>. 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. <u>Amendment</u>. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. <u>Non-Assignment</u>. 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. <u>Recording</u>. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. <u>Legislative Action Required</u>. 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. <u>Additional Representations and Warranties of Company</u>. 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. <u>Certification as to Non-Debarment</u>. 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. <u>Appeals</u>. 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. <u>Wage Enforcement</u>.

(i) <u>Applicability</u>. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "<u>Wage Enforcement Chapter</u>"). 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) <u>Required Contractual Language</u>. 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. <u>Legal Requirements</u>. 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. <u>Counterparts and Electronic Signatures</u>. 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 116 E MCMICKEN LLC, an Ohio limited liability company

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

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

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

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

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

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

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

#### Street Address: 116 E. McMicken Avenue, Cincinnati, Ohio 45202

Parcel ID No.: 094-0007-0244-00

Situate in Cincinnati, Hamilton County, Ohio, in Block 1 of Finlay & Ludlow's Subdivision, and described as follows:

Beginning at a point in the northerly line of McMicken Avenue 174.50 feet eastwardly from the northeast corner of Lang Street and McMicken Avenue; thence N. 47° 43' E. 120.77 feet to the southerly line of Hust Alley; thence S. 42° 41' E. 24 feet along said southerly line of Hust Alley; thence S. 47° 43' W. 121.05 feet to the northerly line of McMicken Avenue; thence N. 42° 01' W. 24 feet to the point of beginning.

Exhibit B to CRA Agreement

## APPLICATION FOR TAX EXEMPTION

## TO BE ATTACHED



March 24, 2021

Subject:	JOB CREATION TAX CREDIT FOR LUMA FINANCIA TECHNOLOGIES	L
From:	Paula Boggs Muething, City Manager	
To:	Mayor and Members of City Council	202101195

Attached is an Emergency Ordinance captioned as follows:

**APPROVING AND AUTHORIZING** the execution of a Job Creation Tax Credit Agreement with Luma Financial Technologies, LLC, pursuant to which the company agrees to create 58 new jobs at 425 Walnut Street, Suite 2410 in the Central Business District of Cincinnati and, for a period of 4 years, the City agrees to provide an income tax credit equal to 35% of City income tax revenue from such new jobs.

## **BACKGROUND/CURRENT CONDITIONS**

Luma Financial Technologies, a fin-tech start-up company in Cincinnati, is expanding so that it can offer additional products and services to its customer base and grow their international presence. The Company engaged with the City of Cincinnati and JobsOhio to seek financial assistance for the expansion project.

## **COMPANY INFORMATION**

Luma Financial Technologies, LLC is a fin-tech start-up company providing a marketplace for structured products and annuities, a class of financial products that help investors further diversify their portfolios beyond traditional stocks and bonds. The company was founded in Cincinnati in 2018 and has received seed investment from Morgan Stanley and Bank of America, two of the largest investment banks on Wall Street. Luma Financial Technologies is currently leasing office space in the US Bank office building at Fifth & Walnut Street in downtown Cincinnati.

## **PROJECT DESCRIPTION**

The Company is taking on an expansion project to offer additional annuities products, build their secondary market (investor to investor) offerings, as well as grow their international presence. Through the expansion project, the company will retain 54 jobs and \$6,560,000 in annual payroll and create a total of 58 new jobs and \$6,814,000 additional annual payroll within the next three years. The new hires will serve a variety of functions for the business including IT, web development, business analysis, quality assurance and HR. Annual average salary will exceed \$115,000 per

Job Creation Tax Credit Luma Financial Technologies Page **2** of 2

new job. The Company will create the new jobs at its current office location in the U.S. Bank building at 425 Walnut Street in the Central Business District.

## **PROPOSED INCENTIVE**

The Administration is recommending a 4-year, 35% non-refundable job creation tax credit (JCTC). The Company will be required to retain the newly created jobs for a total of eight years.

The reason for providing the payroll tax incentive is that the Project provides an advantageous return on investment for the City. In addition, the incentive will require the Company to maintain an operation within the City beyond the expiration of their current lease in 2024. The Company was also considering relocating the new jobs to its secondary location in the New York City area.

Estimated Total Term JCTC Value to Company:	\$171,712
Estimated Total Term New Payroll Tax Revenue:	\$809,503
Incentive Leverage per Dollar of City Investment:	\$4.71

## **RECOMMENDATION**

The Administration recommends approval of this Emergency Ordinance.

Copy: Markiea L. Carter, Interim Director, Department of Community & Economic Development  $\mathcal{MLC}$ 

#### EMERGENCY

# City of Cincinnati An Ordinance No.

TJL BUG

- 2021

**APPROVING AND AUTHORIZING** the execution of a Job Creation Tax Credit Agreement with Luma Financial Technologies, LLC, pursuant to which the company agrees to create 58 new jobs at 425 Walnut Street, Suite 2410 in the Central Business District of Cincinnati and, for a period of 4 years, the City agrees to provide an income tax credit equal to 35% of City income tax revenue from such new jobs.

WHEREAS, the City seeks to increase employment opportunities and encourage the establishment of new jobs in the City of Cincinnati in order to improve the economic welfare of the City and its citizens, in furtherance of the public purposes enunciated in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, Luma Financial Technologies, LLC ("Employer") intends to expend approximately \$200,000 in leasehold improvements to its office at 425 Walnut Street, Suite 2410 (the "Project" and the "Project Site," respectively), which will result in the creation of at least 58 new jobs in Cincinnati within three years if certain income tax credit assistance is provided by the City; and

WHEREAS, the City Manager has recommended that Council authorize the execution of a Job Creation Tax Credit Agreement (the "Agreement") with Employer, in substantially the form attached hereto as Attachment A, which provides for an income tax credit equal to 35% of income tax revenue from new jobs created by Employer at the Project Site for a term of 4 years; and

WHEREAS, the Agreement provides that Employer will spend a minimum of \$200,000 to implement the Project at the Project Site; and

WHEREAS, Employer represents and has documented to the City that the income tax credit authorized by the Agreement is a major factor in Employer's decision to go forward with the Project at the Project Site; and

WHEREAS, the City income tax credit approved by this ordinance is authorized by Sections 718.15 and 718.151 of the Ohio Revised Code; now, therefore,

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

Section 1. That Council approves and authorizes the execution of a Job Creation Tax Credit

Agreement (the "Agreement") with Luma Financial Technologies, LLC ("Employer"), in

substantially the form attached hereto as Attachment A, in order to assist Employer in the

investment of \$200,000 in leasehold improvements to its office at 425 Walnut Street, Suite 2410 (the "Project" and the "Project Site," respectively) in the Central Business District, which provides for a City income tax credit equal to 35% of City income tax revenue from new jobs created by Employer at the Project Site for a period of 4 years, and the creation of 58 new jobs in the City within three years.

Section 2. That Council authorizes the proper City officials to take all necessary and proper actions to fulfill the City's obligations under the Agreement and to enforce 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 to allow the Project and the corresponding revitalization of the City of Cincinnati and improvement of the City's economic welfare to begin at the earliest possible time.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest:

Clerk

## Attachment A to Ordinance

Job Creation Tax Credit Agreement

# SEE ATTACHED

.

Contract Number



## JOB CREATION TAX CREDIT AGREEMENT

This Job Creation Tax Credit Agreement (this "<u>Agreement</u>") 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 "<u>City</u>"), and LUMA FINANCIAL TECHNOLOGIES, LLC, a Delaware limited liability company (the "<u>Grantee</u>").

#### BACKGROUND INFORMATION

- A. The City seeks to increase employment opportunities and to encourage establishment of new jobs within the corporate boundaries of the City of Cincinnati (the "<u>City Boundaries</u>"), in order to improve the economic welfare of the City and its citizens, in furtherance of the public purposes enunciated in Article VIII, Section 13 of the Ohio Constitution.
- B. The City has determined that the Grantee will create new jobs within the City Boundaries in connection with a project to be implemented by the Grantee at 425 Walnut Street, Suite 2410, Cincinnati, Ohio 45202 (the "Project Site"), consisting of the purchase of furniture, fixtures and equipment (the "Project").
- C. Cincinnati Municipal Code ("<u>CMC</u>") Chapter 311 imposes income taxes, including a tax on business net profits. The Grantee represents and has documented to the City that the credit authorized by this Agreement against the tax imposed on the Grantee's net profits under CMC Chapter 311 (the "<u>City Income Tax Credit</u>") is a major factor in the Grantee's decision to go forward with the Project, to offset costs of capital expenditures and/or moving.
- D. The City Income Tax Credit as provided in this Agreement is authorized by Ohio Revised Code ("<u>ORC</u>") Sections 718.15 and 718.151.
- E. The City and Grantee intend that Grantee will implement the Project partly as a result of Grantee cost savings resulting from a thirty-five (35%) City income tax credit applicable to new jobs created by Grantee at the Project Site for a period of four (4) years, and thereby create 58 new jobs in the City within three (3) years of the Determination Date (as defined below).

#### STATEMENT OF THE AGREEMENT

In consideration of the foregoing and the mutual promises and covenants hereinafter set forth, the parties agree as follows:

- 1. <u>PRECONDITIONS TO EFFECTIVENESS OF AGREEMENT</u>. Notwithstanding anything to the contrary herein, this Agreement shall be of no force and effect unless and until (1) this Agreement is fully executed by both parties and (2) the Council of the City of Cincinnati passes an ordinance approving this Agreement, and the ordinance takes effect.
- 2. <u>CERTAIN DEFINITIONS</u>. As used in this Agreement:
  - (A) "<u>Aggregate Employees</u>" means, for any stated period, the Number of Full-Time Employee Equivalents employed either by the Grantee or by a Related Member, calculated with reference to all employees of the Grantee and all Related Members of the Grantee for which (1) the primary work location is within the City of Cincinnati and (2) the Grantee or a Related Member withholds City income taxes.
  - (B) "<u>City Tax Credit Term</u>" means the 4-year term of 2021 through 2024.

- (C) "Determination Date" means September 14, 2020.
- (D) "<u>Employment Retention Period</u>" means an 8-year period commencing as of the start of the City Tax Credit Term.
- (E) "<u>Grantee's City-Wide Employees</u>" means, for any stated period, the Number of Full-Time Employee Equivalents employed by the Grantee, calculated with reference to all employees of the Grantee for which (1) the primary work location is within the City (not limited to the Project Site) and (2) the Grantee withholds City income taxes. An employee is considered to have a primary work location within the City if at least fifty-one percent (51%) of the compensation paid by the Grantee to that employee is taxed by the City with respect to work performed in the City.
- (F) "Income Tax Revenue" means, for any Tax Year:
  - (1) Payments from the Grantee to the City in an amount equal to the aggregate amount of earnings taxes withheld on the qualifying wages (as defined in CMC Section 311-9-Q) paid by the Grantee to all Aggregate Employees whose primary work location is the Project Site; less
  - (2) Any amounts refunded by the City to Aggregate Employees whose primary work location is the Project Site (pursuant to CMC Chapter 311) relating to qualifying wages (as defined in CMC Section 311-9-Q) paid by the Grantee, as such refunds are reported by the City to the Grantee from time to time.
- (G) "Initial Tax Year" means the first Tax Year during which the Grantee is entitled to a City Income Tax Credit.
- (H) "Minimum Qualifying Wage" means an hourly wage of at least (1) \$12.50 per hour on and after July 1, 2018, (2) \$13.50 per hour on and after January 1, 2019, and (3) \$15.00 per hour on and after July 1, 2019; provided however, that if (i) the Grantee contributes to any health, vision and/or dental insurance plan; provides retirement benefits; or provides childcare, tuition, or training reimbursement benefits to a New Employee and (ii) the City approves in writing, in its sole and absolute discretion any such contribution, retirement, or reimbursement benefit, then the hourly cash value of any such City-approved benefit shall be added to the New Employee's base monetary hourly wage for the purposes of calculating that New Employee's hourly wage under this definition.
- (I) "<u>Net Number of New Employees</u>" means, for any Tax Year, the lesser of:
  - (1) The average Number of New Employees in the final three (3) calendar months of that Tax Year; or
  - (2) The remainder computed by subtracting (a) the Baseline City-Wide Employment Level from (b) the average number of the Grantee's City-Wide Employees in the final three (3) months of that Tax Year; or
  - (3) The remainder computed by subtracting (a) the Baseline Aggregate Employment Level from (b) the average number of Aggregate Employees in the final three (3) months of that Tax Year.

Computations of an "average number" of employees, as required by this Agreement, shall be made and documented by the Grantee in a manner subject to approval by the City, such approval not to be unreasonably withheld.

(J) "New Employee" means an employee of the Grantee that meets all of the following criteria during the applicable Tax Year: (i) has a primary work location is the Project Site, (ii) is first employed by the Grantee within the City Boundaries after the Determination Date, and (iii) is paid at least the Minimum Qualifying Wage by the Grantee at all times during the applicable Tax Year. An employee is considered to have a primary work location at the Project Site if at least fifty-one percent (51%) of the compensation paid by the Grantee to that employee is taxed by the City with respect to work performed at the Project Site. "New Employees" may include employees of the Grantee employed in employment positions that were relocated to the Project Site from other operations of the Grantee (or of a Related Member) outside of the City Boundaries.

- (K) "<u>New Income Tax Revenue</u>" means, for any Tax Year, the lesser of:
  - (1) Income Tax Revenue in such Tax Year relating only to New Employees; or
  - (2) The amount computed by multiplying (a) the Net Number of New Employees for such Tax Year by (b) the average amount of Income Tax Revenue received by the City in such Tax Year per New Employee (which average amount is computed by dividing (x) the total Income Tax Revenue for such Tax Year relating only to New Employees by (y) the monthly average of Number of New Employees (determined on a twelve (12) month basis) employed during such Tax Year.
- (L) "<u>Number of Full-Time Employee Equivalents</u>" means one fortieth (1/40) of the total number of compensated hours worked in a work week by permanent employees that are paid at least the Minimum Qualifying Wage for the duration of the applicable Tax Year (whether full-time or part-time), provided that the hours included in the calculation may not exceed forty (40) per week for any individual employee.
- (M) "<u>Number of New Employees</u>" means, for any stated period, the Number of Full-Time Employee Equivalents employed in that period, calculated only with reference to hours worked by New Employees.
- (N) "<u>Related Member</u>" means any of the Grantee's "related members" (as defined in ORC Section 122.171(A)(7)) that has at least one employee whose primary work location is within the City Boundaries (not limited to the Project Site), including those "related members" that begin operations within the City Boundaries on or after the Effective Date.
- (O) "<u>Tax Year</u>" means the fiscal year used by the Grantee to compute net profits under CMC Chapter 311.

#### 3. PROJECT; JOB CREATION AND RETENTION.

- (A) <u>Grantee Representations</u>. The Grantee represents that:
  - (1) The monthly average of the Number of Full-Time Employee Equivalents employed by the Grantee, for whom the Project Site was the primary work location, for the three (3) full calendar month period immediately prior to the Determination Date was 54.
  - (2) The monthly average of the Grantee's City-Wide Employees for the three (3) full calendar month period immediately prior to the Determination Date was 54 (the "<u>Baseline City-Wide Employment Level</u>").
  - (3) The monthly average of Aggregate Employees for the three (3) full calendar month period immediately prior to the Determination Date was 54 (the "<u>Baseline Aggregate Employment</u> <u>Level</u>").
  - (4) Related Members of the Grantee with any employees whose primary work location is within the City Boundaries as of the Effective Date (and the Related Members' Cincinnati addresses and Federal Tax Identification Numbers) consist of the following: NONE.
  - (5) The Grantee shall give written notice to the City of any Related Member that begins operations within the City Boundaries on or after the Effective Date.
- (B) <u>Minimum Expenditures</u>. The Grantee agrees to expend a minimum of \$200,000.00 not later than three (3) years from the Effective Date to accomplish the Project.
- (C) <u>Minimum Number of New Employees</u>. Within three (3) years from the Determination Date, the Grantee agrees to employ a Number of New Employees at the Project Site equal to at least fifty-eight (58). The Grantee agrees that the aggregate annual wages of the New Employees will be equal to at least \$6,814,000.00.

- (D) <u>Relocation of Employment Positions from Elsewhere in Ohio</u>. The Grantee may not relocate a substantial number of employment positions from elsewhere in Ohio (i.e., outside the City) unless the Director of the Department of Community and Economic Development determines that the legislative authority of the county, township, or municipal corporation from which the employment positions would be relocated has been notified by the Grantee of the relocation.
- (E) Employment Retention by the Grantee.
  - (1) During each year of the Employment Retention Period, the Grantee agrees to maintain a monthly average of Aggregate Employees (determined on a twelve (12) month basis) equal to or greater than the Baseline Aggregate Employee Level.
  - (2) During each of the first three (3) years of the City Tax Credit Term, the Grantee agrees to maintain a monthly average of the Grantee's City-Wide Employees (determined on a twelve (12) month basis) equal to or greater than the Baseline City-Wide Employee Level.
  - (3) Beginning with the fourth (4<sup>th</sup>) year of the City Tax Credit Term and continuing during each subsequent year of the Employment Retention Period, the Grantee agrees to maintain an average Net Number of New Employees (determined on a twelve (12) month basis) of at least ninety percent (90%) of the highest Net Number of New Employees reported by the Grantee in calculating the City Income Tax Credit in any prior Tax Year during the City Tax Credit Term.

The Grantee acknowledges and agrees that the obligations of the Grantee under this Agreement may be affected by decisions of the Related Members, as the City's agreement to provide the City Income Tax Credit authorized herein is conditioned on maintenance of the existing employment within the City Boundaries by both the Grantee and the Related Members. The Grantee may apply to the City Manager for waiver of this employment retention requirement (which waiver may be granted in the City Manager's sole discretion) on the grounds that the Grantee's failure to maintain the required Net Number of New Employees is excusable based on exceptional circumstances not under the control of the Grantee or of the Related Members, as described in Section 12.

- (F) <u>City Residents; Referral Procedure for New Hires</u>. The Grantee agrees to use its best efforts to fill at least seventy-five percent (75%) of the new jobs created in connection with the Project with employees residing within the City Boundaries (the "<u>City Resident Hiring Goal</u>"). In furtherance of such goal, the Grantee shall implement the following procedures:
  - (1) <u>City Representative</u>. In its efforts to meet the City Resident Hiring Goal, the Grantee agrees to request referrals from the OhioMeansJobs Center (or such other agency as the City Manager may designate) when positions need to be filled. A representative of the personnel office of the Grantee will meet periodically with a representative of the OhioMeansJobs Center (the "<u>City Representative</u>") to assess the Grantee's future employment needs and to assure that qualified applicants can be recruited and trained in a timely manner.
  - (2) Initial Positions. As soon as practicable after execution of this Agreement, and no later than ninety (90) days prior to the earlier of (a) the scheduled initial occupancy of the Project or completion of renovation or expansion or (b) the date when the following employment positions will be filled, the Grantee agrees to notify the City Representative of the following: (i) the number of new employees that will be required, and the date when the positions must be filled; (ii) the training, qualifications and experience required for the individuals who will fill the positions; and (iii) the name, address and telephone number of the person responsible for hiring. For positions requiring customized training, the Grantee agrees to provide such notice as far in advance of such ninety-day period as is practicable.
  - (3) <u>City Referrals</u>. The City Representative shall, within thirty (30) days after receiving such notification from the Grantee, submit in writing the following: (a) the positions for which the City intends to make referrals; (b) the names and qualifications of referred applicants for each position available; and (c) the date when these applicants will be available for interview. For positions requiring customized training, however, such information may be

submitted to the Grantee up to thirty (30) days prior to the date that such positions are to be filled.

- (4) Interviews. The Grantee agrees to interview those applicants who are referred by the City Representative and shall consider for employment those applicants the Grantee finds to be qualified for an available position. If (a) the City Representative informs the Grantee that it does not intend to make referrals for a position, (b) the City Representative fails to refer applicants who are available for interview for a position in accordance with this subsection or (c) the applicants referred for a position are deemed not qualified by the Grantee, then the Grantee may hire individuals from other sources for such position, without any further obligations or restrictions hereunder as to such position.
- (5) <u>Subsequent Positions</u>. During the three (3) year period following the date upon which this Agreement becomes effective, if the Grantee needs to fill a vacant employment position (either from attrition or an increase in employment), the Grantee agrees to notify the City Representative for an additional referral of applicants. The Grantee, however, is under no obligation to postpone the hiring of a new employee pending receipt of referrals from the City Representative. If the position is still vacant at the time referrals are received from the City Representative, the Grantee shall interview those applicants who are referred by the City Representative and shall consider for employment those applicants the Grantee finds to be qualified for an available position.
- (6) <u>Continuation of Referral Procedure</u>. If the Grantee and the City agree that this referral process has been mutually beneficial, the parties shall continue the process after the three (3) year period.

#### 4. <u>CITY INCOME TAX CREDIT</u>.

- (A) <u>Credit Requirements</u>. Subject to the terms and conditions of this Agreement, for each Tax Year during the City Tax Credit Term in which the Grantee has claimed the City Income Tax Credit on an income tax return filed directly with the City with respect to its net profits and is otherwise in full compliance with all requirements under both CMC Chapter 311 and this Agreement, the Grantee shall be allowed to apply the City Income Tax Credit stated in this Section against the tax imposed on the Grantee's net profits under CMC Chapter 311. The City Income Tax Credit shall be applied in accordance with any applicable rules and regulations (consistent with this Agreement) that may be adopted by the Board of Review (as defined in CMC Section 311-9-B1).
- (B) <u>Amount of Credit</u>. The amount of the City Income Tax Credit shall be thirty-five percent (35%) of any New Income Tax Revenue in a given Tax Year. The City Income Tax Credit shall be applied against net profits tax due to the City (pursuant to CMC Chapter 311) from the Grantee for such Tax Year. The City Income Tax Credit shall be allowed only after the allowance of all other credits and deductions under CMC Chapter 311. If the City Income Tax Credit exceeds the Grantee's tax liability for such Tax Year, the City Income Tax Credit shall not be refunded to the Grantee or carried back to previous Tax Years, but may be carried forward up to five (5) Tax Years; provided, however, that such City Income Tax Credit shall not be carried forward beyond the tenth (10<sup>th</sup>) Tax Year (for the purposes of such calculations, the Initial Tax Year shall be the first (1<sup>st</sup>) Tax Year).
- (C) <u>Related Members</u>. The Grantee acknowledges and agrees that the City Income Tax Credit calculated under this Agreement will be reduced to the extent that reductions in the number of Aggregate Employees of both the Grantee and the Related Members affect the calculation of Net Number of New Employees.
- 5. <u>COVENANT AS TO OUTSTANDING LIABILITIES; INSPECTION OF RECORDS; FALSE STATEMENTS</u>. In accordance with Ohio Revised Code Section 9.66, (A) the Grantee affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio (the "<u>State</u>") or to a political subdivision of the State; (2) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (3) 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 Grantee authorizes the City and/or the State to inspect the personal financial statements of the Grantee, including tax records and other similar information not ordinarily open to public inspection; and (C) the Grantee 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 Grantee 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 Grantee's repayment of any assistance provided by the City in connection with the Project.

#### 6. TERMINATION; REIMBURSEMENT FOR DEFAULT.

- (A) Suspension or Termination of the City Income Tax Credit. Subject to the provisions of subsections (B) and (C) below, if the City provides the Grantee with written notice of an event of default under this Agreement, and such default is not cured to the City's satisfaction within thirty (30) days of such notice, the City shall suspend or terminate the City Income Tax Credit hereunder and may, in the City's sole discretion, take such other measures as may be lawful (including suing for specific performance). Except as provided in subsections (B) or (C) below, such suspension or termination shall only affect City Income Tax Credits otherwise allowable after the date of suspension or termination.
- (B) Grantee's Failure to Comply with Job Creation and Retention Obligations. If the City provides the Grantee with written notice of an event of default under Section 3(C) or 3(D), and such default is not cured to the City's satisfaction within thirty (30) days of such notice, the City may, after giving the Grantee an opportunity to explain such default, require the Grantee to pay to the City all or a portion of the City Income Tax Credits previously claimed under this Agreement. In determining the portion of the City Income Tax Credit amounts to be repaid, the City may consider the effect of market conditions on the Grantee's Project and whether the Grantee continues to maintain other operations and employment in the City. For the avoidance of doubt, the City shall have the ability to exercise its rights under this Section with respect to each event of default under Section 3(C) or 3(D) (i.e. in the event that Grantee to pay to the City all or a portion of the City may require the Grantee to pay to the City all or a continues to maintain other is previously claimed and not repaid under this Agreement after each event of default).
- (C) <u>Grantee's Failure to Comply with Outstanding Liability Obligations</u>. If the City provides the Grantee with written notice of an event of default under Section 5, the City may, after giving the Grantee an opportunity to explain such default, require the Grantee to pay to the City all or any portion of the City Income Tax Credits previously claimed under this Agreement. For the avoidance of doubt, the City shall have the ability to exercise its rights under this Section with respect to each event of default under Section 5 (i.e. in the event that Grantee defaults under Section 5 in multiple Tax Years, the City may require the Grantee to pay to the City all or a portion of the City Income Tax Credits previously claimed and not repaid under this Agreement after each event of default).
- (D) <u>Reimbursement</u>. The Grantee hereby agrees (i) to make any payments required by the City under this Section within thirty (30) days of written demand by the City and (ii) in the event that the City refunds any Income Tax Revenue in a subsequent Tax Year for which a City Income Tax Credit was previously granted pursuant to this Agreement (the "<u>Refund Amount</u>"), then no later than thirty (30) days following Grantee's receipt of written notice from the City (the "<u>City's Notice</u>"), the Grantee will either (a) pay an amount equal to the Refund Amount to the City, as detailed in the City's Notice or (b) deliver written notice to the City that the Grantee will reduce its future City Income Tax Credits by the Refund Amount, such reduction to begin with the first City Income Tax Credit the Grantee is eligible to receive pursuant to this Agreement following the Grantee's receipt of the City's Notice. In the event that the Grantee fails to make a timely election pursuant to the foregoing sentence, then the City may, in its sole and absolute discretion, reduce the amount of any future City Income Tax Credits by the Refund Amount, charge interest on the Refund Amount, terminate this Agreement, and/or take any and all other actions available to the City pursuant to

this Agreement and applicable law. Amounts due and not paid when due shall bear interest at the rate specified in ORC Section 1343.03(A) (as such rate is in effect on the date of the applicable payment demand by the City). The Grantee hereby expressly waives the statute of limitations period contained in CMC Chapter 311 with respect to any such demand and payment.

7. SUBMISSION OF ANNUAL REPORTS. During the Employment Retention Period, the Grantee shall submit to the City an annual progress report documenting the Number of Full-Time Employee Equivalents at the Project Site, the number of the Grantee's City-Wide Employees, the number of Aggregate Employees, the Net Number of New Employees, the New Income Tax Revenue, the hourly wages and any related Grantee-paid benefits claimed as part of a Minimum Qualifying Wage for each New Employee for the duration of the applicable Tax Year, and any other information that the City deems relevant to this Agreement. The report shall include computations of necessary employment information for the Grantee and the Related Members for the report period, and the City may, in its discretion, require that the report be submitted in a certain format and manner (e.g., submission of a particular electronic file format, mailing a hard copy, etc.). The Grantee agrees to furnish the progress report to the City no later than the first business day of May following each year during the Employment Retention Period. The annual report, as submitted, must be certified as accurate and signed by (A) an independent certified public accountant licensed to do business in the state of Ohio (an "ICPA"). (B) the Chief Executive Officer of the Grantee and (C) the Chief Financial Officer of the Grantee; provided, however, that (1) reports for any or all of the initial two Tax Years may be submitted without certification and signature of an ICPA, so long as the Grantee's report for the third Tax Year includes an ICPA certification and signature for all Tax Years in which a City Income Tax Credit has been claimed without previous certification by an ICPA and (2) after the report for the third Tax Year, the ICPA certification and signature need not be provided more frequently than once every two years, so long as each ICPA certification and signature applies both to the current reported Tax Year and any previous Tax Year in which a City Income Tax Credit has been claimed without previous certification by an ICPA. If the report is approved by the City as demonstrating compliance with this Agreement, a certificate of verification from the City will be sent to the Grantee and the Tax Commissioner (as defined in CMC Section 311-9-T2) within thirty (30) days after receipt of the annual report. Failure to submit an annual report within the time periods specified herein will be considered a default and may result in termination of this Agreement.

#### 8. <u>SMALL BUSINESS ENTERPRISE PROGRAM AND EQUAL EMPLOYMENT OPPORTUNITY</u> <u>PROGRAM.<sup>1</sup></u>

- (A) Small Business Enterprise Program Policy. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in CMC Section 323-1, "SBEs"). Pursuant to CMC Section 323-7, 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), supplies (as such term is defined in CMC Section 323-1), services (as such term is defined in CMC Section 323-1), supplies (as such term is defined in CMC Section 323-1). Accordingly, the Grantee 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 Grantee may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Grantee shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:
  - (1) Including qualified SBEs on solicitation lists.
  - (2) Assuring that SBEs are solicited whenever they are potential sources. The Grantee 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.

<sup>&</sup>lt;sup>1</sup> Note: The Department of Community and Economic Development is currently reviewing alternatives for updating this provision based on recent legislative changes adopted by Council. If an alternative policy is approved by DCED prior to the execution of this Agreement, this provision will be revised accordingly.

- (3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (4) If any subcontracts are to be let, the Grantee shall require the prime contractor (if different from the Grantee) to take the above affirmative steps.
- (5) Prior to the commencement of work under any subcontracts, the Grantee 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 Grantee shall update the report monthly.
- (6) The Grantee 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) <u>Small Business Enterprise Program Remedies</u>. Failure of the Grantee 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 Grantee 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.
- (C) <u>Equal Employment Opportunity Program</u>. This Agreement is subject to and hereby incorporates the provisions of the Equal Employment Opportunity Program set forth in CMC Chapter 325 (including, without limitation, CMC Section 325-9).
- (D) <u>Further Information</u>. Details concerning both the SBE Program and the Equal Employment Opportunity Program can be obtained from the City's Department of Economic Inclusion, Two Centennial Plaza, 805 Central Avenue, Suite 222, Cincinnati, Ohio 45202, (513)352-3144.
- 9. <u>RECORDS, ACCESS AND MAINTENANCE</u>. Throughout the period required by CMC Section 311-81, the Grantee agrees to establish and maintain such records as are necessary to document compliance with this Agreement (including but not limited to, financial reports, payroll records, documentation with respect to any Grantee-paid benefits claimed as part of a Minimum Qualifying Wage, intake and participant information and all other relevant information). For the three (3) year period following the end of the Employment Retention Period, the Grantee agrees to maintain records of the amounts of City Income Tax Credits claimed and allowed. The parties further agree that records with respect to any audit disallowances, litigation or dispute between the City and the Grantee shall be maintained for the time needed for the resolution of said disallowance, litigation or dispute, and that in the event of early termination of this Agreement (or if for any other reason the City shall require a review of the records related to the Project), the Grantee shall, at its own cost and expense, segregate all such records related to the Project and this Agreement (or copies thereof) from its other records of operation.
- 10. <u>AUDITS AND INSPECTIONS</u>. At any time during normal business hours upon written notice and as often as the City may deem necessary, the Grantee shall make available to the City and to appropriate State agencies or officials all records of the Grantee and the Related Members with respect to matters covered by this Agreement including, but not limited to, records of personnel and conditions of employment, and shall permit the City to audit, examine and make excerpts or transcripts from such records.
- 11. <u>FORBEARANCE NOT A WAIVER</u>. No act of forbearance or failure to insist on the prompt performance by the Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the City of any of its rights hereunder.
- 12. <u>ENFORCED FAILURE TO PERFORM FOR CAUSES BEYOND CONTROL OF THE GRANTEE --</u> <u>RELIEF FROM REIMBURSEMENT OBLIGATION</u>.

- (A) The Grantee shall not be required to pay the reimbursement required for default under Section 6(B) of this Agreement for any Tax Year in which such default is due to unforeseeable causes beyond the control of the Grantee and the Related Members and without fault or negligence of the Grantee or the Related Members, restricted to: acts of the federal, state or city government; orders of courts; fires, floods, epidemics, earthquakes or similar natural disasters; quarantine restrictions; strikes; and other causes which in the opinion of the City Manager are beyond the control of the Related Members and without fault or negligence of the Grantee or the Related Members and without fault or negligence of the Grantee or the Related Members. Economic difficulties of the Grantee or the Related Members (including, without limitation, bankruptcy), do not constitute causes beyond the control of the Grantee or the Related Members under this subsection. If the Grantee seeks the benefit of the provisions of this subsection it shall, within sixty (60) days after the beginning of any such unforeseeable cause, notify the City thereof in writing.
- (B) Notwithstanding the provisions set forth in subsection (A) above, the Grantee shall not be allowed a City Income Tax Credit hereunder (including any credit carried forward from prior tax years) in any Tax Year in which the Grantee is not in full compliance with all requirements of this Agreement.
- 13. <u>COMPLIANCE WITH IMMIGRATION AND NATIONALITY ACT</u>. In the performance of its obligations under this Agreement, the Grantee 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.
- 14. INDEMNIFICATION. The Grantee shall indemnify, defend and save the City, its agents and employees harmless from and against any and all losses, claims, damages, liabilities, costs or expenses (including reasonable fees, disbursements, settlement costs and other charges of counsel) imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other documents related to this Agreement or any undertaking or proceeding related to any of the transactions contemplated hereby or thereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs and the fees and expenses of counsel, except that the Grantee shall not have any obligation under this Section to the extent that such losses, claims, damages, liabilities, costs or expenses do not result from an act or omission by the Grantee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section may be unenforceable because it violates any law or public policy, the Grantee shall pay the maximum portion which it is permitted to pay under applicable law to the City in satisfaction of indemnified matters under this Section. To the extent permitted by applicable law, neither the Grantee nor the City shall assert, and each of the Grantee and the City hereby waives, any claim against either the Grantee or the City, as applicable, on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other documents related to this Agreement or any undertaking or transaction contemplate hereby. All amounts due under this Section shall be payable upon demand. The foregoing indemnity shall survive the termination of this Agreement.
- 15. <u>CITY IDENTIFICATION IN MARKETING MATERIALS</u>. The Grantee shall acknowledge the financial support of the City with respect to this Agreement in all printed materials (including but not limited to informational releases, pamphlets and brochures, construction signs, project and identification signage and stationary) and any publicity (such as but not limited to materials appearing on the Internet, television, cable television, radio or in the press or any other printed media). In identifying the City as a funding source, the Grantee shall use either the phrase "Funded 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. The Grantee's obligations under this Section shall be in effect throughout the term of this Agreement.
- 16. <u>CONFLICT OF INTEREST</u>. The Grantee agrees that no officer, employee or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of this

Agreement, nor any immediate family member, close business associate or organization which is about to employ any such person, shall have any personal financial interest, direct or indirect, in the Grantee or in this Agreement and the Grantee shall take appropriate steps to assure compliance.

#### 17. <u>MISCELLANEOUS</u>.

- (A) <u>Relocation of Project Site Within the City</u>. During the term of the Tax Credit, the Grantee may change the location of the Project Site to another location, but only within the City of Cincinnati's corporate boundaries.
- (B) <u>Governing Law</u>. This Agreement shall be governed by the laws of the State as to all matters, including but not limited to matters of validity, construction, effect and performance.
- (C) <u>Forum and Venue</u>. All actions regarding this Agreement shall be brought in a court of competent subject matter jurisdiction in Hamilton County, Ohio.
- (D) <u>Entire Document</u>. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.
- (E) <u>Severability</u>. If any provisions of this Agreement are declared by final non-appealable court order to be unlawful or invalid under applicable law, then such order shall not invalidate the remainder of this Agreement not found to be unlawful or invalid and shall not create any liability to the City resulting from the unlawfulness or invalidity of such provisions. Any provision so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such provision to the fullest extent possible while remaining lawful and valid.
- (F) <u>Assignment</u>. Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or subcontracted by the Grantee without the prior express written consent of the City.
- (G) <u>Successor in Interest</u>. Each and all of the Grantee's obligations under this Agreement shall extend to and bind not only the Grantee, but its successors and assigns. Only in the case of assignment consented to by the City (as provided in subsection (F) above), the Grantee's benefits hereunder shall inure to the benefit of any approved assignee.
- (H) <u>Certification as to Non-Debarment</u>. Grantee represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, Grantee shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If Grantee or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, Grantee shall be considered in default under this Agreement.
- (I) <u>Notices</u>. All notices, consents, demands, requests and other communications given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by mail, registered or certified, to the addresses set forth hereunder, or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

To the City:

City of Cincinnati 801 Plum Street, Room 152 Cincinnati, Ohio 45202 Attention: City Manager

with a copy to:

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

To the Grantee:

Luma Financial Technologies, LLC 425 Walnut Street, Suite 2410 Cincinnati, Ohio, 45202 Attention: Bob Jenkins, CFO

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

- (J) <u>Wage Enforcement</u>. This Agreement 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 a contractor or subcontractor of that person, shall report all complaints or adverse determinations of Wage Theft and Payroll Fraud (as defined in Chapter 326 of the Cincinnati Municipal Code) against the person, contractor or subcontractors to the Department of Economic Inclusion within 30 days of notification of the complaint or adverse determination. Under the Wage Enforcement provisions, the City shall have the authority, under certain circumstances, to terminate this Agreement or reduce the incentives or subsidies to be provided under this Agreement and to seek other remedies.
- (K) <u>Legal Requirements</u>. In completing and operating the Project, and in undertaking the matters contemplated by this Agreement, the Grantee 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.
- (L) <u>Counterparts and Electronic Signatures</u>. 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.
- 18. <u>FEES</u>. The Grantee shall pay to the City (i) within 10 days following the Effective Date, an initial administrative fee in connection with the City's application, underwriting, processing and documentation costs equal to \$3,000.00, and (ii) concurrently with the submission of each required annual report under Section 7, an annual monitoring, review and administration fee of \$2,000.00.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest date of which shall be the "Effective Date."

LUMA FINANCIAL TECHNOLOGIES, LLC, an Ohio limited liability company

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

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

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

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

As authorized by corporate resolution dated \_\_\_\_\_, 2021

CITY OF CINCINNATI, an Ohio municipal corporation

By:\_

Paula Boggs Muething, City Manager

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

Approved as to Form:

Assistant City Solicitor

Certification of Funds:

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

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

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

By: \_\_\_\_

Karen Alder, City Finance Director

## Attachment A to Ordinance

Job Creation Tax Credit Agreement

## SEE ATTACHED

.

Contract Number



### JOB CREATION TAX CREDIT AGREEMENT

This Job Creation Tax Credit Agreement (this "<u>Agreement</u>") 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 "<u>City</u>"), and LUMA FINANCIAL TECHNOLOGIES, LLC, a Delaware limited liability company (the "<u>Grantee</u>").

#### **BACKGROUND INFORMATION**

- A. The City seeks to increase employment opportunities and to encourage establishment of new jobs within the corporate boundaries of the City of Cincinnati (the "<u>City Boundaries</u>"), in order to improve the economic welfare of the City and its citizens, in furtherance of the public purposes enunciated in Article VIII, Section 13 of the Ohio Constitution.
- B. The City has determined that the Grantee will create new jobs within the City Boundaries in connection with a project to be implemented by the Grantee at 425 Walnut Street, Suite 2410, Cincinnati, Ohio 45202 (the "Project Site"), consisting of the purchase of furniture, fixtures and equipment (the "Project").
- C. Cincinnati Municipal Code ("<u>CMC</u>") Chapter 311 imposes income taxes, including a tax on business net profits. The Grantee represents and has documented to the City that the credit authorized by this Agreement against the tax imposed on the Grantee's net profits under CMC Chapter 311 (the "<u>City Income Tax Credit</u>") is a major factor in the Grantee's decision to go forward with the Project, to offset costs of capital expenditures and/or moving.
- D. The City Income Tax Credit as provided in this Agreement is authorized by Ohio Revised Code ("<u>ORC</u>") Sections 718.15 and 718.151.
- E. The City and Grantee intend that Grantee will implement the Project partly as a result of Grantee cost savings resulting from a thirty-five (35%) City income tax credit applicable to new jobs created by Grantee at the Project Site for a period of four (4) years, and thereby create 58 new jobs in the City within three (3) years of the Determination Date (as defined below).

#### STATEMENT OF THE AGREEMENT

In consideration of the foregoing and the mutual promises and covenants hereinafter set forth, the parties agree as follows:

- 1. <u>PRECONDITIONS TO EFFECTIVENESS OF AGREEMENT</u>. Notwithstanding anything to the contrary herein, this Agreement shall be of no force and effect unless and until (1) this Agreement is fully executed by both parties and (2) the Council of the City of Cincinnati passes an ordinance approving this Agreement, and the ordinance takes effect.
- 2. <u>CERTAIN DEFINITIONS</u>. As used in this Agreement:
  - (A) "<u>Aggregate Employees</u>" means, for any stated period, the Number of Full-Time Employee Equivalents employed either by the Grantee or by a Related Member, calculated with reference to all employees of the Grantee and all Related Members of the Grantee for which (1) the primary work location is within the City of Cincinnati and (2) the Grantee or a Related Member withholds City income taxes.
  - (B) "<u>City Tax Credit Term</u>" means the 4-year term of 2021 through 2024.

- (C) "Determination Date" means September 14, 2020.
- (D) "<u>Employment Retention Period</u>" means an 8-year period commencing as of the start of the City Tax Credit Term.
- (E) "<u>Grantee's City-Wide Employees</u>" means, for any stated period, the Number of Full-Time Employee Equivalents employed by the Grantee, calculated with reference to all employees of the Grantee for which (1) the primary work location is within the City (not limited to the Project Site) and (2) the Grantee withholds City income taxes. An employee is considered to have a primary work location within the City if at least fifty-one percent (51%) of the compensation paid by the Grantee to that employee is taxed by the City with respect to work performed in the City.
- (F) "Income Tax Revenue" means, for any Tax Year:
  - (1) Payments from the Grantee to the City in an amount equal to the aggregate amount of earnings taxes withheld on the qualifying wages (as defined in CMC Section 311-9-Q) paid by the Grantee to all Aggregate Employees whose primary work location is the Project Site; less
  - (2) Any amounts refunded by the City to Aggregate Employees whose primary work location is the Project Site (pursuant to CMC Chapter 311) relating to qualifying wages (as defined in CMC Section 311-9-Q) paid by the Grantee, as such refunds are reported by the City to the Grantee from time to time.
- (G) "Initial Tax Year" means the first Tax Year during which the Grantee is entitled to a City Income Tax Credit.
- (H) "<u>Minimum Qualifying Wage</u>" means an hourly wage of at least (1) \$12.50 per hour on and after July 1, 2018, (2) \$13.50 per hour on and after January 1, 2019, and (3) \$15.00 per hour on and after July 1, 2019; *provided however*, that if (i) the Grantee contributes to any health, vision and/or dental insurance plan; provides retirement benefits; or provides childcare, tuition, or training reimbursement benefits to a New Employee and (ii) the City approves in writing, in its sole and absolute discretion any such contribution, retirement, or reimbursement benefit, then the hourly cash value of any such City-approved benefit shall be added to the New Employee's base monetary hourly wage for the purposes of calculating that New Employee's hourly wage under this definition.
- (I) "<u>Net Number of New Employees</u>" means, for any Tax Year, the lesser of:
  - (1) The average Number of New Employees in the final three (3) calendar months of that Tax Year; or
  - (2) The remainder computed by subtracting (a) the Baseline City-Wide Employment Level from (b) the average number of the Grantee's City-Wide Employees in the final three (3) months of that Tax Year; or
  - (3) The remainder computed by subtracting (a) the Baseline Aggregate Employment Level from (b) the average number of Aggregate Employees in the final three (3) months of that Tax Year.

Computations of an "average number" of employees, as required by this Agreement, shall be made and documented by the Grantee in a manner subject to approval by the City, such approval not to be unreasonably withheld.

(J) "New Employee" means an employee of the Grantee that meets all of the following criteria during the applicable Tax Year: (i) has a primary work location is the Project Site, (ii) is first employed by the Grantee within the City Boundaries after the Determination Date, and (iii) is paid at least the Minimum Qualifying Wage by the Grantee at all times during the applicable Tax Year. An employee is considered to have a primary work location at the Project Site if at least fifty-one percent (51%) of the compensation paid by the Grantee to that employee is taxed by the City with respect to work performed at the Project Site. "New Employees" may include employees of the Grantee employed in employment positions that were relocated to the Project Site from other operations of the Grantee (or of a Related Member) outside of the City Boundaries.

- (K) "New Income Tax Revenue" means, for any Tax Year, the lesser of:
  - (1) Income Tax Revenue in such Tax Year relating only to New Employees; or
  - (2) The amount computed by multiplying (a) the Net Number of New Employees for such Tax Year by (b) the average amount of Income Tax Revenue received by the City in such Tax Year per New Employee (which average amount is computed by dividing (x) the total Income Tax Revenue for such Tax Year relating only to New Employees by (y) the monthly average of Number of New Employees (determined on a twelve (12) month basis) employed during such Tax Year.
- (L) "<u>Number of Full-Time Employee Equivalents</u>" means one fortieth (1/40) of the total number of compensated hours worked in a work week by permanent employees that are paid at least the Minimum Qualifying Wage for the duration of the applicable Tax Year (whether full-time or part-time), provided that the hours included in the calculation may not exceed forty (40) per week for any individual employee.
- (M) "<u>Number of New Employees</u>" means, for any stated period, the Number of Full-Time Employee Equivalents employed in that period, calculated only with reference to hours worked by New Employees.
- (N) "<u>Related Member</u>" means any of the Grantee's "related members" (as defined in ORC Section 122.171(A)(7)) that has at least one employee whose primary work location is within the City Boundaries (not limited to the Project Site), including those "related members" that begin operations within the City Boundaries on or after the Effective Date.
- (O) "<u>Tax Year</u>" means the fiscal year used by the Grantee to compute net profits under CMC Chapter 311.

#### 3. PROJECT; JOB CREATION AND RETENTION.

- (A) <u>Grantee Representations</u>. The Grantee represents that:
  - (1) The monthly average of the Number of Full-Time Employee Equivalents employed by the Grantee, for whom the Project Site was the primary work location, for the three (3) full calendar month period immediately prior to the Determination Date was 54.
  - (2) The monthly average of the Grantee's City-Wide Employees for the three (3) full calendar month period immediately prior to the Determination Date was 54 (the "<u>Baseline City-Wide</u> <u>Employment Level</u>").
  - (3) The monthly average of Aggregate Employees for the three (3) full calendar month period immediately prior to the Determination Date was 54 (the "Baseline Aggregate Employment Level").
  - (4) Related Members of the Grantee with any employees whose primary work location is within the City Boundaries as of the Effective Date (and the Related Members' Cincinnati addresses and Federal Tax Identification Numbers) consist of the following: NONE.
  - (5) The Grantee shall give written notice to the City of any Related Member that begins operations within the City Boundaries on or after the Effective Date.
- (B) <u>Minimum Expenditures</u>. The Grantee agrees to expend a minimum of \$200,000.00 not later than three (3) years from the Effective Date to accomplish the Project.
- (C) <u>Minimum Number of New Employees</u>. Within three (3) years from the Determination Date, the Grantee agrees to employ a Number of New Employees at the Project Site equal to at least fifty-eight (58). The Grantee agrees that the aggregate annual wages of the New Employees will be equal to at least \$6,814,000.00.

- (D) <u>Relocation of Employment Positions from Elsewhere in Ohio</u>. The Grantee may not relocate a substantial number of employment positions from elsewhere in Ohio (i.e., outside the City) unless the Director of the Department of Community and Economic Development determines that the legislative authority of the county, township, or municipal corporation from which the employment positions would be relocated has been notified by the Grantee of the relocation.
- (E) Employment Retention by the Grantee.
  - (1) During each year of the Employment Retention Period, the Grantee agrees to maintain a monthly average of Aggregate Employees (determined on a twelve (12) month basis) equal to or greater than the Baseline Aggregate Employee Level.
  - (2) During each of the first three (3) years of the City Tax Credit Term, the Grantee agrees to maintain a monthly average of the Grantee's City-Wide Employees (determined on a twelve (12) month basis) equal to or greater than the Baseline City-Wide Employee Level.
  - (3) Beginning with the fourth (4<sup>th</sup>) year of the City Tax Credit Term and continuing during each subsequent year of the Employment Retention Period, the Grantee agrees to maintain an average Net Number of New Employees (determined on a twelve (12) month basis) of at least ninety percent (90%) of the highest Net Number of New Employees reported by the Grantee in calculating the City Income Tax Credit in any prior Tax Year during the City Tax Credit Term.

The Grantee acknowledges and agrees that the obligations of the Grantee under this Agreement may be affected by decisions of the Related Members, as the City's agreement to provide the City Income Tax Credit authorized herein is conditioned on maintenance of the existing employment within the City Boundaries by both the Grantee and the Related Members. The Grantee may apply to the City Manager for waiver of this employment retention requirement (which waiver may be granted in the City Manager's sole discretion) on the grounds that the Grantee's failure to maintain the required Net Number of New Employees is excusable based on exceptional circumstances not under the control of the Grantee or of the Related Members, as described in Section 12.

- (F) <u>City Residents; Referral Procedure for New Hires</u>. The Grantee agrees to use its best efforts to fill at least seventy-five percent (75%) of the new jobs created in connection with the Project with employees residing within the City Boundaries (the "<u>City Resident Hiring Goal</u>"). In furtherance of such goal, the Grantee shall implement the following procedures:
  - (1) <u>City Representative</u>. In its efforts to meet the City Resident Hiring Goal, the Grantee agrees to request referrals from the OhioMeansJobs Center (or such other agency as the City Manager may designate) when positions need to be filled. A representative of the personnel office of the Grantee will meet periodically with a representative of the OhioMeansJobs Center (the "<u>City Representative</u>") to assess the Grantee's future employment needs and to assure that qualified applicants can be recruited and trained in a timely manner.
  - (2) Initial Positions. As soon as practicable after execution of this Agreement, and no later than ninety (90) days prior to the earlier of (a) the scheduled initial occupancy of the Project or completion of renovation or expansion or (b) the date when the following employment positions will be filled, the Grantee agrees to notify the City Representative of the following: (i) the number of new employees that will be required, and the date when the positions must be filled; (ii) the training, qualifications and experience required for the individuals who will fill the positions; and (iii) the name, address and telephone number of the person responsible for hiring. For positions requiring customized training, the Grantee agrees to provide such notice as far in advance of such ninety-day period as is practicable.
  - (3) <u>City Referrals</u>. The City Representative shall, within thirty (30) days after receiving such notification from the Grantee, submit in writing the following: (a) the positions for which the City intends to make referrals; (b) the names and qualifications of referred applicants for each position available; and (c) the date when these applicants will be available for interview. For positions requiring customized training, however, such information may be

submitted to the Grantee up to thirty (30) days prior to the date that such positions are to be filled.

- (4) <u>Interviews</u>. The Grantee agrees to interview those applicants who are referred by the City Representative and shall consider for employment those applicants the Grantee finds to be qualified for an available position. If (a) the City Representative informs the Grantee that it does not intend to make referrals for a position, (b) the City Representative fails to refer applicants who are available for interview for a position in accordance with this subsection or (c) the applicants referred for a position are deemed not qualified by the Grantee, then the Grantee may hire individuals from other sources for such position, without any further obligations or restrictions hereunder as to such position.
- (5) <u>Subsequent Positions</u>. During the three (3) year period following the date upon which this Agreement becomes effective, if the Grantee needs to fill a vacant employment position (either from attrition or an increase in employment), the Grantee agrees to notify the City Representative for an additional referral of applicants. The Grantee, however, is under no obligation to postpone the hiring of a new employee pending receipt of referrals from the City Representative. If the position is still vacant at the time referrals are received from the City Representative, the Grantee shall interview those applicants who are referred by the City Representative and shall consider for employment those applicants the Grantee finds to be qualified for an available position.
- (6) <u>Continuation of Referral Procedure</u>. If the Grantee and the City agree that this referral process has been mutually beneficial, the parties shall continue the process after the three (3) year period.

#### 4. <u>CITY INCOME TAX CREDIT</u>.

- (A) <u>Credit Requirements</u>. Subject to the terms and conditions of this Agreement, for each Tax Year during the City Tax Credit Term in which the Grantee has claimed the City Income Tax Credit on an income tax return filed directly with the City with respect to its net profits and is otherwise in full compliance with all requirements under both CMC Chapter 311 and this Agreement, the Grantee shall be allowed to apply the City Income Tax Credit stated in this Section against the tax imposed on the Grantee's net profits under CMC Chapter 311. The City Income Tax Credit shall be applied in accordance with any applicable rules and regulations (consistent with this Agreement) that may be adopted by the Board of Review (as defined in CMC Section 311-9-B1).
- (B) <u>Amount of Credit</u>. The amount of the City Income Tax Credit shall be thirty-five percent (35%) of any New Income Tax Revenue in a given Tax Year. The City Income Tax Credit shall be applied against net profits tax due to the City (pursuant to CMC Chapter 311) from the Grantee for such Tax Year. The City Income Tax Credit shall be allowed only after the allowance of all other credits and deductions under CMC Chapter 311. If the City Income Tax Credit exceeds the Grantee's tax liability for such Tax Year, the City Income Tax Credit shall not be refunded to the Grantee or carried back to previous Tax Years, but may be carried forward up to five (5) Tax Years; provided, however, that such City Income Tax Credit shall not be carried forward beyond the tenth (10<sup>th</sup>) Tax Year (for the purposes of such calculations, the Initial Tax Year shall be the first (1<sup>st</sup>) Tax Year).
- (C) <u>Related Members</u>. The Grantee acknowledges and agrees that the City Income Tax Credit calculated under this Agreement will be reduced to the extent that reductions in the number of Aggregate Employees of both the Grantee and the Related Members affect the calculation of Net Number of New Employees.
- 5. <u>COVENANT AS TO OUTSTANDING LIABILITIES; INSPECTION OF RECORDS; FALSE STATEMENTS</u>. In accordance with Ohio Revised Code Section 9.66, (A) the Grantee affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio (the "<u>State</u>") or to a political subdivision of the State; (2) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (3) 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 Grantee authorizes the City and/or the State to inspect the personal financial statements of the Grantee, including tax records and other similar information not ordinarily open to public inspection; and (C) the Grantee 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 Grantee 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 Grantee's repayment of any assistance provided by the City in connection with the Project.

#### 6. TERMINATION; REIMBURSEMENT FOR DEFAULT.

- (A) Suspension or Termination of the City Income Tax Credit. Subject to the provisions of subsections (B) and (C) below, if the City provides the Grantee with written notice of an event of default under this Agreement, and such default is not cured to the City's satisfaction within thirty (30) days of such notice, the City shall suspend or terminate the City Income Tax Credit hereunder and may, in the City's sole discretion, take such other measures as may be lawful (including suing for specific performance). Except as provided in subsections (B) or (C) below, such suspension or termination shall only affect City Income Tax Credits otherwise allowable after the date of suspension or termination.
- (B) Grantee's Failure to Comply with Job Creation and Retention Obligations. If the City provides the Grantee with written notice of an event of default under Section 3(C) or 3(D), and such default is not cured to the City's satisfaction within thirty (30) days of such notice, the City may, after giving the Grantee an opportunity to explain such default, require the Grantee to pay to the City all or a portion of the City Income Tax Credits previously claimed under this Agreement. In determining the portion of the City Income Tax Credit amounts to be repaid, the City may consider the effect of market conditions on the Grantee's Project and whether the Grantee continues to maintain other operations and employment in the City. For the avoidance of doubt, the City shall have the ability to exercise its rights under this Section with respect to each event of default under Section 3(C) or 3(D) (i.e. in the event that Grantee to pay to the City all or a portion of the City may require the Grantee to pay to the City all or a previously claimed and not repaid under this Agreement after each event of default).
- (C) <u>Grantee's Failure to Comply with Outstanding Liability Obligations</u>. If the City provides the Grantee with written notice of an event of default under Section 5, the City may, after giving the Grantee an opportunity to explain such default, require the Grantee to pay to the City all or any portion of the City Income Tax Credits previously claimed under this Agreement. For the avoidance of doubt, the City shall have the ability to exercise its rights under this Section with respect to each event of default under Section 5 (i.e. in the event that Grantee defaults under Section 5 in multiple Tax Years, the City may require the Grantee to pay to the City all or a portion of the City Income Tax Credits previously claimed and not repaid under this Agreement after each event of default).
- (D) <u>Reimbursement</u>. The Grantee hereby agrees (i) to make any payments required by the City under this Section within thirty (30) days of written demand by the City and (ii) in the event that the City refunds any Income Tax Revenue in a subsequent Tax Year for which a City Income Tax Credit was previously granted pursuant to this Agreement (the "<u>Refund Amount</u>"), then no later than thirty (30) days following Grantee's receipt of written notice from the City (the "<u>City's Notice</u>"), the Grantee will either (a) pay an amount equal to the Refund Amount to the City, as detailed in the City's Notice or (b) deliver written notice to the City that the Grantee will reduce its future City Income Tax Credits by the Refund Amount, such reduction to begin with the first City Income Tax Credit the Grantee is eligible to receive pursuant to this Agreement following the Grantee's receipt of the City's Notice. In the event that the Grantee fails to make a timely election pursuant to the foregoing sentence, then the City may, in its sole and absolute discretion, reduce the amount of any future City Income Tax Credits by the Refund Amount, charge interest on the Refund Amount, terminate this Agreement, and/or take any and all other actions available to the City pursuant to

this Agreement and applicable law. Amounts due and not paid when due shall bear interest at the rate specified in ORC Section 1343.03(A) (as such rate is in effect on the date of the applicable payment demand by the City). The Grantee hereby expressly waives the statute of limitations period contained in CMC Chapter 311 with respect to any such demand and payment.

7. SUBMISSION OF ANNUAL REPORTS. During the Employment Retention Period, the Grantee shall submit to the City an annual progress report documenting the Number of Full-Time Employee Equivalents at the Project Site, the number of the Grantee's City-Wide Employees, the number of Aggregate Employees, the Net Number of New Employees, the New Income Tax Revenue, the hourly wages and any related Grantee-paid benefits claimed as part of a Minimum Qualifying Wage for each New Employee for the duration of the applicable Tax Year, and any other information that the City deems relevant to this Agreement. The report shall include computations of necessary employment information for the Grantee and the Related Members for the report period, and the City may, in its discretion, require that the report be submitted in a certain format and manner (e.g., submission of a particular electronic file format, mailing a hard copy, etc.). The Grantee agrees to furnish the progress report to the City no later than the first business day of May following each year during the Employment Retention Period. The annual report, as submitted, must be certified as accurate and signed by (A) an independent certified public accountant licensed to do business in the state of Ohio (an "ICPA"). (B) the Chief Executive Officer of the Grantee and (C) the Chief Financial Officer of the Grantee; provided, however, that (1) reports for any or all of the initial two Tax Years may be submitted without certification and signature of an ICPA, so long as the Grantee's report for the third Tax Year includes an ICPA certification and signature for all Tax Years in which a City Income Tax Credit has been claimed without previous certification by an ICPA and (2) after the report for the third Tax Year, the ICPA certification and signature need not be provided more frequently than once every two years, so long as each ICPA certification and signature applies both to the current reported Tax Year and any previous Tax Year in which a City Income Tax Credit has been claimed without previous certification by an ICPA. If the report is approved by the City as demonstrating compliance with this Agreement, a certificate of verification from the City will be sent to the Grantee and the Tax Commissioner (as defined in CMC Section 311-9-T2) within thirty (30) days after receipt of the annual report. Failure to submit an annual report within the time periods specified herein will be considered a default and may result in termination of this Agreement.

#### 8. <u>SMALL BUSINESS ENTERPRISE PROGRAM AND EQUAL EMPLOYMENT OPPORTUNITY</u> <u>PROGRAM</u>.<sup>1</sup>

- (A) Small Business Enterprise Program Policy. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in CMC Section 323-1, "SBEs"). Pursuant to CMC Section 323-7, 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), supplies (as such term is defined in CMC Section 323-1), services (as such term is defined in CMC Section 323-1), supplies (as such term is defined in CMC Section 323-1). Accordingly, the Grantee 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 Grantee may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. The Grantee shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:
  - (1) Including qualified SBEs on solicitation lists.
  - (2) Assuring that SBEs are solicited whenever they are potential sources. The Grantee 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.

<sup>&</sup>lt;sup>1</sup>Note: The Department of Community and Economic Development is currently reviewing alternatives for updating this provision based on recent legislative changes adopted by Council. If an alternative policy is approved by DCED prior to the execution of this Agreement, this provision will be revised accordingly.

- (3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (4) If any subcontracts are to be let, the Grantee shall require the prime contractor (if different from the Grantee) to take the above affirmative steps.
- (5) Prior to the commencement of work under any subcontracts, the Grantee 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 Grantee shall update the report monthly.
- (6) The Grantee 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) <u>Small Business Enterprise Program Remedies</u>. Failure of the Grantee 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 Grantee 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.
- (C) <u>Equal Employment Opportunity Program</u>. This Agreement is subject to and hereby incorporates the provisions of the Equal Employment Opportunity Program set forth in CMC Chapter 325 (including, without limitation, CMC Section 325-9).
- (D) <u>Further Information</u>. Details concerning both the SBE Program and the Equal Employment Opportunity Program can be obtained from the City's Department of Economic Inclusion, Two Centennial Plaza, 805 Central Avenue, Suite 222, Cincinnati, Ohio 45202, (513)352-3144.
- 9. <u>RECORDS, ACCESS AND MAINTENANCE</u>. Throughout the period required by CMC Section 311-81, the Grantee agrees to establish and maintain such records as are necessary to document compliance with this Agreement (including but not limited to, financial reports, payroll records, documentation with respect to any Grantee-paid benefits claimed as part of a Minimum Qualifying Wage, intake and participant information and all other relevant information). For the three (3) year period following the end of the Employment Retention Period, the Grantee agrees to maintain records of the amounts of City Income Tax Credits claimed and allowed. The parties further agree that records with respect to any audit disallowances, litigation or dispute between the City and the Grantee shall be maintained for the time needed for the resolution of said disallowance, litigation or dispute, and that in the event of early termination of this Agreement (or if for any other reason the City shall require a review of the records related to the Project), the Grantee shall, at its own cost and expense, segregate all such records related to the Project and this Agreement (or copies thereof) from its other records of operation.
- 10. <u>AUDITS AND INSPECTIONS</u>. At any time during normal business hours upon written notice and as often as the City may deem necessary, the Grantee shall make available to the City and to appropriate State agencies or officials all records of the Grantee and the Related Members with respect to matters covered by this Agreement including, but not limited to, records of personnel and conditions of employment, and shall permit the City to audit, examine and make excerpts or transcripts from such records.
- 11. <u>FORBEARANCE NOT A WAIVER</u>. No act of forbearance or failure to insist on the prompt performance by the Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the City of any of its rights hereunder.
- 12. <u>ENFORCED FAILURE TO PERFORM FOR CAUSES BEYOND CONTROL OF THE GRANTEE --</u> <u>RELIEF FROM REIMBURSEMENT OBLIGATION</u>.

- (A) The Grantee shall not be required to pay the reimbursement required for default under Section 6(B) of this Agreement for any Tax Year in which such default is due to unforeseeable causes beyond the control of the Grantee and the Related Members and without fault or negligence of the Grantee or the Related Members, restricted to: acts of the federal, state or city government; orders of courts; fires, floods, epidemics, earthquakes or similar natural disasters; quarantine restrictions; strikes; and other causes which in the opinion of the City Manager are beyond the control of the Related Members and without fault or negligence or the Related Members. Economic difficulties of the Grantee or the Related Members (including, without limitation, bankruptcy), do not constitute causes beyond the control of the Grantee or the Related Members under this subsection. If the Grantee seeks the benefit of the provisions of this subsection it shall, within sixty (60) days after the beginning of any such unforeseeable cause, notify the City thereof in writing.
- (B) Notwithstanding the provisions set forth in subsection (A) above, the Grantee shall not be allowed a City Income Tax Credit hereunder (including any credit carried forward from prior tax years) in any Tax Year in which the Grantee is not in full compliance with all requirements of this Agreement.
- 13. <u>COMPLIANCE WITH IMMIGRATION AND NATIONALITY ACT</u>. In the performance of its obligations under this Agreement, the Grantee 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.
- 14. INDEMNIFICATION. The Grantee shall indemnify, defend and save the City, its agents and employees harmless from and against any and all losses, claims, damages, liabilities, costs or expenses (including reasonable fees, disbursements, settlement costs and other charges of counsel) imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other documents related to this Agreement or any undertaking or proceeding related to any of the transactions contemplated hereby or thereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs and the fees and expenses of counsel, except that the Grantee shall not have any obligation under this Section to the extent that such losses, claims, damages, liabilities, costs or expenses do not result from an act or omission by the Grantee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section may be unenforceable because it violates any law or public policy, the Grantee shall pay the maximum portion which it is permitted to pay under applicable law to the City in satisfaction of indemnified matters under this Section. To the extent permitted by applicable law, neither the Grantee nor the City shall assert, and each of the Grantee and the City hereby waives, any claim against either the Grantee or the City, as applicable, on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other documents related to this Agreement or any undertaking or transaction contemplate hereby. All amounts due under this Section shall be payable upon demand. The foregoing indemnity shall survive the termination of this Agreement.
- 15. <u>CITY IDENTIFICATION IN MARKETING MATERIALS</u>. The Grantee shall acknowledge the financial support of the City with respect to this Agreement in all printed materials (including but not limited to informational releases, pamphlets and brochures, construction signs, project and identification signage and stationary) and any publicity (such as but not limited to materials appearing on the Internet, television, cable television, radio or in the press or any other printed media). In identifying the City as a funding source, the Grantee shall use either the phrase "Funded 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. The Grantee's obligations under this Section shall be in effect throughout the term of this Agreement.
- 16. <u>CONFLICT OF INTEREST</u>. The Grantee agrees that no officer, employee or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of this

Agreement, nor any immediate family member, close business associate or organization which is about to employ any such person, shall have any personal financial interest, direct or indirect, in the Grantee or in this Agreement and the Grantee shall take appropriate steps to assure compliance.

#### 17. <u>MISCELLANEOUS</u>.

- (A) <u>Relocation of Project Site Within the City</u>. During the term of the Tax Credit, the Grantee may change the location of the Project Site to another location, but only within the City of Cincinnati's corporate boundaries.
- (B) <u>Governing Law</u>. This Agreement shall be governed by the laws of the State as to all matters, including but not limited to matters of validity, construction, effect and performance.
- (C) <u>Forum and Venue</u>. All actions regarding this Agreement shall be brought in a court of competent subject matter jurisdiction in Hamilton County, Ohio.
- (D) <u>Entire Document</u>. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.
- (E) <u>Severability</u>. If any provisions of this Agreement are declared by final non-appealable court order to be unlawful or invalid under applicable law, then such order shall not invalidate the remainder of this Agreement not found to be unlawful or invalid and shall not create any liability to the City resulting from the unlawfulness or invalidity of such provisions. Any provision so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such provision to the fullest extent possible while remaining lawful and valid.
- (F) <u>Assignment</u>. Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or subcontracted by the Grantee without the prior express written consent of the City.
- (G) <u>Successor in Interest</u>. Each and all of the Grantee's obligations under this Agreement shall extend to and bind not only the Grantee, but its successors and assigns. Only in the case of assignment consented to by the City (as provided in subsection (F) above), the Grantee's benefits hereunder shall inure to the benefit of any approved assignee.
- (H) <u>Certification as to Non-Debarment</u>. Grantee represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, Grantee shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If Grantee or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, Grantee shall be considered in default under this Agreement.
- (I) <u>Notices</u>. All notices, consents, demands, requests and other communications given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by mail, registered or certified, to the addresses set forth hereunder, or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

To the City:

City of Cincinnati 801 Plum Street, Room 152 Cincinnati, Ohio 45202 Attention: City Manager

with a copy to:

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

To the Grantee:

Luma Financial Technologies, LLC 425 Walnut Street, Suite 2410 Cincinnati, Ohio, 45202 Attention: Bob Jenkins, CFO

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

- (J) <u>Wage Enforcement</u>. This Agreement 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 a contractor or subcontractor of that person, shall report all complaints or adverse determinations of Wage Theft and Payroll Fraud (as defined in Chapter 326 of the Cincinnati Municipal Code) against the person, contractor or subcontractors to the Department of Economic Inclusion within 30 days of notification of the complaint or adverse determination. Under the Wage Enforcement provisions, the City shall have the authority, under certain circumstances, to terminate this Agreement or reduce the incentives or subsidies to be provided under this Agreement and to seek other remedies.
- (K) <u>Legal Requirements</u>. In completing and operating the Project, and in undertaking the matters contemplated by this Agreement, the Grantee 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.
- (L) <u>Counterparts and Electronic Signatures</u>. 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.
- 18. <u>FEES</u>. The Grantee shall pay to the City (i) within 10 days following the Effective Date, an initial administrative fee in connection with the City's application, underwriting, processing and documentation costs equal to \$3,000.00, and (ii) concurrently with the submission of each required annual report under Section 7, an annual monitoring, review and administration fee of \$2,000.00.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest date of which shall be the "Effective Date."

LUMA FINANCIAL TECHNOLOGIES, LLC, an Ohio limited liability company

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

Printed Name:\_\_\_\_

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

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

As authorized by corporate resolution dated \_\_\_\_\_, 2021

CITY OF CINCINNATI, an Ohio municipal corporation

By:\_

Paula Boggs Muething, City Manager

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

Approved as to Form:

Assistant City Solicitor

Certification of Funds:

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

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

Amount:

By: Karen Alder, City Finance Director



March 24, 2021

To:Mayor and Members of City Council202101196From:Paula Boggs Muething, City ManagerSubject:LEED CRA ABATEMENT AGREEMENT FOR 18 W. ELDER ST.

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 Robel 1 LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 18 W. Elder Street in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of an existing building into approximately 500 square feet of commercial space and approximately 3,300 square feet of residential space, consisting of 7 residential rental units, 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 \$300,000.

## **BACKGROUND/CURRENT CONDITIONS**

18 W. Elder Street is a three-story vacant historic building located just east of Findlay Market in Over-the-Rhine. The property is also directly south of Findlay Park. The property owner is planning a full renovation of the building that will achieve a LEED Silver Certification from the U.S. Green Building Council.

## **DEVELOPER INFORMATION**

Robel I, LLC is a small business owned by Mr. Robel Abraham. Mr. Abraham has been renovating residential properties for the last seven years and also owns a property at 1646 Vine Street, which will also be renovated in 2021.

## **PROJECT DESCRIPTION**

Developer will renovate the vacant historic building at 18 W. Elder Street in Overthe-Rhine. Work will be completed to LEED Silver standards, as defined by the U.S. Green Building Council. Once completed, the building will include seven residential apartment units as well as 500 square feet of ground floor commercial space. The apartments will be 500 square feet on average and rents will range between \$900 and LEED CRA Tax Exemption Robel I, LLC – 18 W. Elder Street Page 2 of 3

\$1,000 per month. Total project cost is estimated to be \$350,000. In connection with this project, it is estimated that seven temporary construction jobs will be created with an annual payroll of \$120,000.

## **PROPOSED INCENTIVE**

The Emergency Ordinance provides for a 100% (net 52%), 15-year CRA tax exemption for this property. The exemption applies only to the increase in value of the building attributable to the project improvements. Pursuant to the Commercial CRA policy established by City Council, this project is located within the Streetcar VTICA Area and is therefore subject to analysis based on project underwriting, VTICA contribution, and job creation to determine abatement terms.

The administration recommends a 15-year CRA term to allow for the project secure adequate construction and permanent financing to complete this LEED Silver certified renovation. This project will result in a highly visible renovated building and new apartments directly adjacent to Findlay Market and Findlay Park.

SUMMARY	
Forgone Public Benefit if Project Does not Proceed	
CPS PILOT (Forgone New Revenue)	(\$58,495)
VTICA (Forgone New Revenue)	(\$26,588)
Income Tax (Forgone New Revenue)	(\$2,520)
Total Public Benefit Lost	(\$87,603)
Incentive Value	
Annual Net Incentive to Developer	\$6,145
Total Term Incentive to Developer	\$92,173
<b>City's Portion of Property Taxes Forgone</b>	\$22,877
Public Benefit	
CPS PILOT	
Annual CPS Pilot	\$3,900
Total Term CPS PILOT	\$58,495
VTICA	
Annual VTICA	\$1,773
Total Term VTICA	\$26,588
Income Tax (Max)	\$2,520
Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$87,603
Total Public Benefit ROI*	\$0.95
City's ROI*	\$3.83
*If the project were going to happen regardless of incentive, this is th	

\*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 LEED CRA Tax Exemption Robel I, LLC – 18 W. Elder Street Page **3** of 3

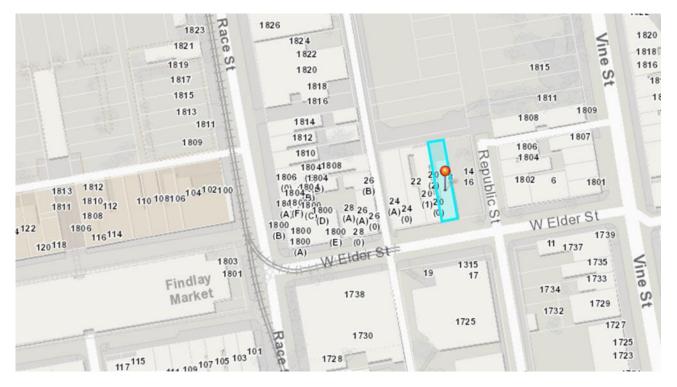
## **RECOMMENDATION**

The Administration recommends approval of this Emergency Ordinance. The project will restore a historic building to LEED Silver standards, activate a vacant property adjacent to Findlay Market and Findlay Park, and will bring additional housing units to the urban core and will add much needed density to northern Over-the-Rhine. The emergency clause is needed so that the project can meet its construction commencement deadlines.

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**

18 W. Elder Street – Current Condition



# EMERGENCY City of Cincinnati An Ordinance No.\_\_\_\_

TJL BWG

2021

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement (LEED or Living Building Challenge)* with Robel 1 LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 18 W. Elder Street in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of an existing building into approximately 500 square feet of commercial space and approximately 3,300 square feet of residential space, consisting of 7 residential rental units, 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 \$300,000.

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 ("ORC") 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 environmentallyfriendly 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, Robel 1 LLC (the "Company") desires to remodel an existing building located on real property at 18 W. Elder Street located within the corporate boundaries of the City of Cincinnati, to LEED or LBC standards into approximately 3,300 square feet of residential space, consisting of 7 residential rental units, and approximately 500 square feet of commercial space (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; 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 ORC 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 Robel 1 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 18 W. Elder Street in Cincinnati, as calculated by the Hamilton County

Auditor, in connection with the remodeling of an existing building into approximately 500 square

feet of commercial space and approximately 3,300 square feet of residential space, consisting of 7

residental rental units, 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 \$300,000.

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, 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:	 , 2021

John Cranley, Mayor

Attest: \_\_\_\_

Clerk

## Attachment A to Ordinance

<u>Community Reinvestment Area Tax Exemption Agreement</u> (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 "<u>Agreement</u>") 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 "<u>City</u>"), and ROBEL 1 LLC, an Ohio limited liability company (the "<u>Company</u>").

#### **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 18 W. Elder 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 "<u>Project</u>"); 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.
- The Company has submitted to the City an application for this tax exemption agreement (the "<u>Application</u>"), a copy of which is attached hereto as <u>Exhibit B</u>, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$<u>1,250</u>) 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 (\$<u>750</u>) made payable to the Ohio Development Services Agency ("<u>ODSA</u>"), 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 "<u>State</u>").
- 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 ("<u>VTICA</u>") 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 "<u>VTICA</u> <u>Contribution</u>"), 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 Overthe-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. \_\_\_\_\_-2021, passed by Cincinnati City Council on \_\_\_\_\_, 2021.
- 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 into approximately 3,300 square feet of residential space, consisting of 7 residential rental units, and approximately 500 square feet of commercial space on the Property (the "Improvements") at an estimated aggregate cost of \$300,000 to commence after the execution of this Agreement and to be completed no later than July 1, 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 remodeling 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. <u>Real Property Tax Exemption</u>. 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 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 2023 nor extend beyond the earlier of (i) tax year 2037 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. <u>Use; Maintenance; Inspections</u>. 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. <u>Compliance with Board of Education Agreement</u>. 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. <u>Duty of Company to Pay Taxes</u>. 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. <u>Company Certifications Regarding Non-Delinquency of Tax Obligations</u>. 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. <u>Covenant of Satisfaction of Tax and Other Obligations</u>. 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 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. <u>City Cooperation</u>. 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. <u>Continuation of Exemptions</u>. 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. <u>City Not Liable</u>. 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.<sup>1</sup>

A. <u>Compliance with Small Business Enterprise Program</u>. 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 ("<u>CMC</u>") Section 323-1-S, "<u>SBEs</u>"). 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

<sup>&</sup>lt;sup>1</sup> 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.

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. <u>Remedies for Noncompliance with Small Business Enterprise Program</u>. 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. <u>Jobs</u>. 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. <u>Jobs to be Created by Company</u>. The Company agrees to use its best efforts to create 5 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. <u>Company's Estimated Payroll Increase</u>. The Company's increase in the number of employees will result in approximately \$120,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. <u>Community Reinvestment Area Employment</u>. 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. <u>Posting Available Employment Opportunities</u>. 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. <u>Equal Employment Opportunity</u>. 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. <u>Compliance with Immigration and Nationality Act</u>. 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. <u>Default</u>. 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. <u>Annual Review and Report</u>. 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 "<u>Annual Review and Report</u>"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

#### Section 18. <u>Revocation.</u>

Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer Α. 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. <u>Prior Statutory Violations</u>. 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. <u>False Statements; Penalties; Material Representations</u>.

A. <u>Generally</u>. 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 9.66) may a term of imprisonment of not more than six (6) months.

Material Representations - Board of Education Agreement and VTICA. The Β. 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. <u>Conflict of Interest</u>. 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. <u>Annual Fee</u>. 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. <u>Discontinued Operations</u>. 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. <u>Notices</u>. 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:

Robel 1 LLC Attention: Robel Abraham 2019 Highland Avenue, Cincinnati, Ohio 45219

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. <u>Acknowledgment of City Participation</u>. 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. <u>Entire Agreement</u>. 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. <u>Governing Law</u>. 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. <u>Waiver</u>. 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. <u>Severability</u>. 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. <u>Amendment</u>. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. <u>Non-Assignment</u>. 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. <u>Recording</u>. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. <u>Legislative Action Required</u>. 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. <u>Additional Representations and Warranties of Company</u>. 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. <u>Certification as to Non-Debarment</u>. 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. <u>Appeals</u>. 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. <u>Wage Enforcement</u>.

(i) <u>Applicability</u>. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "<u>Wage Enforcement Chapter</u>"). 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) <u>Required Contractual Language</u>. 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. <u>Legal Requirements</u>. 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. <u>Counterparts and Electronic Signatures</u>. 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 ROBEL 1 LLC, an Ohio limited liability company

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

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

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

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

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

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

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

#### Street Address: 18 W. Elder Street, Cincinnati, Ohio 45202

Parcel ID No.: 094-0008-0328-00

Situate in the City of Cincinnati, Hamilton County, Ohio and being all of Block "C", which was laid out by Gen. James Findlay and J.D. Garrard and recorded in Book 47, Page 319, Hamilton County Records, being part of Lot #20 in Block "C" as subdivided by Commissioners in Partition case among the heirs of James and Jane Findlay, deceased, of their estate; commencing on the North side of Elder Street 34 feet from Bremen Street; thence North parallel with Bremen Street 100 feet to a 10 foot alley; thence West along said alley 20 feet; thence Southwardly along the East line of Lot #19, 100 feet to Elder Street; thence along Elder Street Eastwardly 20 feet to the place of beginning.

## Exhibit B to CRA Agreement

APPLICATION FOR TAX EXEMPTION

# TO BE ATTACHED

{00330831-1}

## Attachment A to Ordinance

<u>Community Reinvestment Area Tax Exemption Agreement</u> (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 "<u>Agreement</u>") 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 "<u>City</u>"), and ROBEL 1 LLC, an Ohio limited liability company (the "<u>Company</u>").

#### **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 ("<u>LEED</u>") 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 "<u>LBC</u>" 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 18 W. Elder 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 "<u>Project</u>"); 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.
- The Company has submitted to the City an application for this tax exemption agreement (the "<u>Application</u>"), a copy of which is attached hereto as <u>Exhibit B</u>, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$<u>1,250</u>) 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 (\$<u>750</u>) made payable to the Ohio Development Services Agency ("<u>ODSA</u>"), 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 "<u>State</u>").
- 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 ("<u>VTICA</u>") 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 "<u>VTICA</u> <u>Contribution</u>"), 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 Overthe-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. \_\_\_\_\_-2021, passed by Cincinnati City Council on \_\_\_\_\_, 2021.
- 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 into approximately 3,300 square feet of residential space, consisting of 7 residential rental units, and approximately 500 square feet of commercial space on the Property (the "Improvements") at an estimated aggregate cost of \$300,000 to commence after the execution of this Agreement and to be completed no later than July 1, 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 remodeling 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. <u>Real Property Tax Exemption</u>. 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 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 2023 nor extend beyond the earlier of (i) tax year 2037 or (ii) the end of the fifteenth (15th) year of exemption.

Section 3. <u>Use: Maintenance: Inspections</u>. 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. <u>Compliance with Board of Education Agreement</u>. 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. <u>Duty of Company to Pay Taxes</u>. 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. <u>Company Certifications Regarding Non-Delinquency of Tax Obligations</u>. 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. <u>Covenant of Satisfaction of Tax and Other Obligations</u>. 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 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. <u>City Cooperation</u>. 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. <u>Continuation of Exemptions</u>. 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. <u>City Not Liable</u>. 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. <u>Compliance with Small Business Enterprise Program</u>. 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 ("<u>CMC</u>") Section 323-1-S, "<u>SBEs</u>"). 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

<sup>&</sup>lt;sup>1</sup> 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.

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. <u>Remedies for Noncompliance with Small Business Enterprise Program</u>. 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. <u>Jobs</u>. 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. <u>Job Creation and Retention</u>.

A. <u>Jobs to be Created by Company</u>. The Company agrees to use its best efforts to create 5 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. <u>Company's Estimated Payroll Increase</u>. The Company's increase in the number of employees will result in approximately \$120,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. <u>Community Reinvestment Area Employment</u>. 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. <u>Posting Available Employment Opportunities</u>. 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. <u>Equal Employment Opportunity</u>. 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. <u>Compliance with Immigration and Nationality Act</u>. 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. <u>Default</u>. 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

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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. <u>Annual Review and Report</u>. 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 <u>Annual Review and Report</u>). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

#### Section 18. <u>Revocation.</u>

Α. 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. <u>Prior Statutory Violations</u>. 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. <u>False Statements; Penalties; Material Representations</u>.

A. <u>Generally</u>. 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 9.66) may a guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 9.66) may a term of imprisonment of not more than six (6) months.

Material Representations - Board of Education Agreement and VTICA. The Β. 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. <u>Conflict of Interest</u>. 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. <u>Annual Fee</u>. 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. <u>Discontinued Operations</u>. 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. <u>Notices</u>. 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:

Robel 1 LLC Attention: Robel Abraham 2019 Highland Avenue, Cincinnati, Ohio 45219

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. <u>Acknowledgment of City Participation</u>. 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. <u>Entire Agreement</u>. 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. <u>Governing Law</u>. 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. <u>Waiver</u>. 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. <u>Severability</u>. 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. <u>Amendment</u>. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. <u>Non-Assignment</u>. 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. <u>Recording</u>. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. <u>Legislative Action Required</u>. 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. <u>Additional Representations and Warranties of Company</u>. 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. <u>Certification as to Non-Debarment</u>. 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. <u>Appeals</u>. 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. <u>Wage Enforcement</u>.

(i) <u>Applicability</u>. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "<u>Wage Enforcement Chapter</u>"). 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) <u>Required Contractual Language</u>. 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

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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. <u>Legal Requirements</u>. 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. <u>Counterparts and Electronic Signatures</u>. 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 "<u>Effective Date</u>").

CITY OF CINCINNATI, an Ohio municipal corporation ROBEL 1 LLC, an Ohio limited liability company

By: \_\_\_

Paula Boggs Muething, City Manager

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

Ву: \_\_\_\_\_

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

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

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

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

#### Street Address: 18 W. Elder Street, Cincinnati, Ohio 45202

Parcel ID No.: 094-0008-0328-00

Situate in the City of Cincinnati, Hamilton County, Ohio and being all of Block "C", which was laid out by Gen. James Findlay and J.D. Garrard and recorded in Book 47, Page 319, Hamilton County Records, being part of Lot #20 in Block "C" as subdivided by Commissioners in Partition case among the heirs of James and Jane Findlay, deceased, of their estate; commencing on the North side of Elder Street 34 feet from Bremen Street; thence North parallel with Bremen Street 100 feet to a 10 foot alley; thence West along said alley 20 feet; thence Southwardly along the East line of Lot #19, 100 feet to Elder Street; thence along Elder Street Eastwardly 20 feet to the place of beginning.

## Exhibit B to CRA Agreement

## **APPLICATION FOR TAX EXEMPTION**

## TO BE ATTACHED



March 24, 2021

То:	Mayor and Members of City Council	202101197
From:	Paula Boggs Muething, City Manager	
Subject:	COMMUNITY REINVESTMENT AREA TAX EXEMPTI AGREEMENT FOR NORTHCROWN 56 MCMICKEN L	

Attached is an Emergency Ordinance captioned as follows:

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Northcrown 56 McMicken LLC, an affiliate of Northcrown Property LLC thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 56 E. McMicken Avenue in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the existing building into approximately 1,081 square feet of commercial space and approximately 6,829 square feet of residential space, consisting of 13 apartments, at a total remodeling cost of approximately \$1,501,184.

## **BACKGROUND/CURRENT CONDITIONS**

This property is a multi-story vacant building in the Over-the-Rhine neighborhood of Cincinnati. It is within the OTR Historic District. The property is within walking distance to Grant Park. The Developer submitted a CRA application to DCED requesting assistance in the redevelopment of this property.

## **DEVELOPER INFORMATION**

Northcrown 56 McMicken LLC is an entity affiliate of Northcrown Property LLC, a neighborhood developer, who primarily redevelops vacant buildings in the Over the Rhine neighborhood surrounding Grant Park. In the past, they have stabilized the historic Crown Brewery Building located at 131 E. McMicken and have multiple projects underway north along E. McMicken.

CRA Tax Exemption Northcrown 56 McMicken LLC. Page 2 of 3

## **PROJECT DESCRIPTION**

Once completed, this project will consist of 13 apartment units and 1,081 square feet of commercial space. Rent will range between \$814-\$1,081 per month depending on the square footage of the unit (ranging from 407-938 square feet). In connection with this project, it is estimated that 30 temporary construction jobs are created at a total annual payroll of \$1,200,000.

This 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**

The Ordinance provides for a 100% (net 52%), 15-year CRA tax exemption for this property. The exemption applies only to the increase in value of the building attributable to the project improvements. Pursuant to the Commercial CRA policy established by City Council, this project is located within the Streetcar VTICA Area and is therefore subject to analysis based on project underwriting, VTICA contribution, and job creation to determine abatement terms.

The administration is recommending a 15 year CRA term to allow for the project to secure adequate construction and permanent financing using the realized savings. This project will result in a more vibrant commercial district along the McMicken corridor and bring much needed housing to the northern section of Over the Rhine.

SUMMARY	
Forgone Public Benefit if Project Does not Proceed	
CPS PILOT (Forgone New Revenue)	(\$137,989)
VTICA (Forgone New Revenue)	(\$62,722)
Income Tax (Forgone New Revenue)	(\$110,880)
Total Public Benefit Lost	(\$311,591)
Incentive Value	
Annual Net Incentive to Developer	\$14,496
Total Term Incentive to Developer	\$217,437
City's Portion of Property Taxes Forgone	\$53,967
Public Benefit	
CPS PILOT	
Annual CPS Pilot	\$9,199
Total Term CPS PILOT	\$137,989
VTICA	
Annual VTICA	\$4,181
Total Term VTICA	\$62,722
Income Tax (Max)	\$110,880
Total Public Benefit (CPS PILOT/VTICA /Income Tax)	\$311,591
Total Public Benefit ROI*	\$1.43
City's ROI*	\$5.77

CRA Tax Exemption Northcrown 56 McMicken LLC. Page **3** of 3

## **RECOMMENDATION**

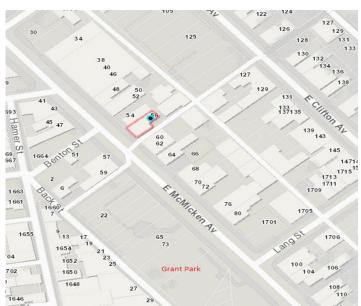
The Administration recommends approval of this Emergency Ordinance. The emergency clause in the Ordinance is required for the developer to maintain a strict project schedule.

Attachment: A. Property location and photographs

Copy: Markiea L. Carter, Interim Director, Department of Community & Economic Development  $\mathcal{MLC}$ 



# Attachment A: Location and Photographs



# EMERGENCY City of Cincinnati An Ordinance No.\_\_

DSC BUB

2021

**APPROVING AND AUTHORIZING** the City Manager to execute a *Community Reinvestment Area Tax Exemption Agreement* with Northcrown 56 McMicken LLC, an affiliate of Northcrown Property LLC, thereby authorizing a 15-year tax exemption for 100% of the value of improvements made to real property located at 56 E. McMicken Avenue in the Over-the-Rhine neighborhood of Cincinnati, in connection with the remodeling of the existing building into approximately 1,081 square feet of commercial space and approximately 6,829 square feet of residential space, consisting of 13 apartments, at a total remodeling cost of approximately \$1,501,184.

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 ("ORC") 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, sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area; 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, Northcrown 56 McMicken LLC (the "Company") desires to remodel an existing building located on real property at 56 E. McMicken Avenue located within the corporate boundaries of the City of Cincinnati, into approximately 1,081 square feet of commercial space and approximately 6,829 square feet of residential space, consisting of 13 apartments (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*, 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; 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 ORC 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 with Northcrown 56 McMicken 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 56 E. McMicken Avenue in Cincinnati, as calculated by the Hamilton County Auditor,

in connection with the remodeling of the existing building into approximately 1,081 square feet

of commercial space and approximately 6,829 square feet of residential space, consisting of 13

apartments, to be completed at a total construction cost of approximately \$1,501,184.

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
- 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, 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: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest:

Clerk

Attachment A to Ordinance

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CRA Tax Exemption Agreement

SEE ATTACHED

#### Community Reinvestment Area Tax Exemption Agreement

This Community Reinvestment Area Tax Exemption Agreement (this "<u>Agreement</u>") 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 "<u>City</u>"), and NORTHCROWN 56 MCMICKEN LLC, an Ohio limited liability company and affiliate of Northcrown Property LLC (the "<u>Company</u>").

#### **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 "<u>Statute</u>").
- 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 "<u>Commercial Policy Ordinance</u>"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 56 E. McMicken Avenue, 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.
- E. The Company has proposed to remodel a building located on the Property, within the boundaries of the City of Cincinnati, as more fully described in Section 1 herein (the "<u>Project</u>"), provided that the appropriate development incentives are available to support the economic viability of the Project.
- F. 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.
- G. 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.
- H. The Company has submitted to the City an application for this tax exemption agreement (the "<u>Application</u>"), a copy of which is attached hereto as <u>Exhibit B</u>, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$<u>1,250</u>) 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.

- I. 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.
- J. 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.
- K. 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").
- L. 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 "<u>State</u>").
- M. 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.
- N. 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.
- O. 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.
- P. The Company acknowledges that Streetcar operations in the Central Business District and Overthe-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.
- Q. 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.

- R. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2021, passed by Cincinnati City Council on \_\_\_\_\_, 2021.
- S. 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:

Project. Upon issuance of the necessary zoning and building approvals, the Section 1. Company agrees to remodel the existing structure to create approximately: 1,081 square feet of commercial space, and 6,829 square feet of residential space consisting of 13 apartments on the Property (the "Improvements") at an estimated aggregate cost of \$1,501,184, to commence after the execution of this Agreement and to be completed no later than April 1, 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 remodeling shall be in compliance with applicable building code requirements and zoning regulations. 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.

Real Property Tax Exemption. Subject to the satisfaction of the conditions set Section 2. forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (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 fifteen (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 and (D) 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 <u>assessed</u>, as opposed to years in which taxes are <u>billed</u>. No exemption shall commence after tax year 2022 nor extend beyond the <u>earlier</u> of (i) tax year 2036 or (ii) the end of the 15<sup>th</sup> year of exemption.

Section 3. <u>Use: Maintenance: Inspections</u>. 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. <u>Compliance with Board of Education Agreement</u>. 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. <u>Duty of Company to Pay Taxes</u>. 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. <u>Company Certifications Regarding Non-Delinquency of Tax Obligations</u>. 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.

Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Section 7. 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. <u>City Cooperation</u>. 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. <u>Continuation of Exemptions</u>. 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. <u>City Not Liable</u>. 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.<sup>1</sup>

A. <u>Compliance with Small Business Enterprise Program</u>. 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 ("<u>CMC</u>") Section 323-1-S, "<u>SBEs</u>"). 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-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.

(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. <u>Remedies for Noncompliance with Small Business Enterprise Program</u>. 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

<sup>&</sup>lt;sup>1</sup> 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.

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. <u>Jobs</u>. 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. <u>Jobs to be Created by Company</u>. The Company agrees to use its best efforts to create (i) 10 full-time permanent jobs and (ii) 30 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. <u>Company's Estimated Payroll Increase</u>. The Company's increase in the number of employees will result in approximately (i) \$312,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$1,200,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. <u>Community Reinvestment Area Employment</u>. 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. <u>Posting Available Employment Opportunities</u>. 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. <u>Equal Employment Opportunity</u>. 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. <u>Compliance with Immigration and Nationality Act</u>. 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. <u>Default</u>. 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. <u>Annual Review and Report</u>. 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 "<u>Annual Review and Report</u>"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

#### Section 18. <u>Revocation</u>.

Generally, Pursuant to Ohio Revised Code Section 3735.68, the housing officer Α. 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. <u>Prior Statutory Violations</u>. 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. <u>False Statements; Penalties; Material Representations</u>.

A. <u>Generally</u>. 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.

Material Representations - Board of Education Agreement and VTICA. The Β. 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. <u>Conflict of Interest</u>. 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. <u>Annual Fee</u>. As authorized by Ohio Revised Code Section 3735.671(D), the Company shall pay an annual fee of Five Hundred Dollars ( $\frac{500}{200}$ ) or one percent (1%) of the annual taxes exempted under this Agreement, whichever is greater, but not to exceed Two Thousand, Five Hundred Dollars ( $\frac{2.500}{200}$ ) per annum. This fee is due with submission of the information for Annual Review and Report by March 1 of each year.

Section 22. <u>Discontinued Operations</u>. 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. <u>Notices</u>. 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:

Northcrown 56 McMicken LLC 131 E. McMicken Avenue Cincinnati, Ohio 45202 Attn: Jeremy Moore, Chief Operating Officer

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. <u>Acknowledgment of City Participation</u>. 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. <u>Entire Agreement</u>. 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. <u>Governing Law</u>. 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. <u>Waiver</u>. 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. <u>Severability</u>. 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. <u>Amendment</u>. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. <u>Non-Assignment</u>. 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. <u>Recording</u>. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. <u>Legislative Action Required</u>. 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. <u>Additional Representations and Warranties of Company</u>. 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. <u>Certification as to Non-Debarment</u>. 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. <u>Appeals</u>. 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. <u>Wage Enforcement</u>.

(i) <u>Applicability</u>. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "<u>Wage Enforcement</u> <u>Chapter</u>"). 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) <u>Required Contractual Language</u>. 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 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. <u>Legal Requirements</u>. 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. <u>Counterparts and Electronic Signatures</u>. 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

By: \_

NORTHCROWN 56 MCMICKEN LLC, Error! Reference source not found.

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

Paula Boggs Muething, City Manager Date: \_\_\_\_\_, 2021

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

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

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

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

Situated in the City of Cincinnati, County of Hamilton and State of Ohio:

All that part of Block three (3) of a subdivision made by James Findlay and J.C. and J. L. Ludlow and recorded in Book 49, Pages 420, 421, and 422 of the records of Hamilton County, Ohio and being Lot Number Eleven (11) in said Block Three (3) as subdivided by the Executors of James Findlay, deceased, a plat of which subdivision is recorded in Deed Book 70, Page 133 of said records.

PPN: 094-0005-0296-00 Property Address: 56 East McMicken Avenue, Cincinnati, Ohio 45202

## Exhibit B to CRA Agreement

APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED

Attachment A to Ordinance

CRA Tax Exemption Agreement

SEE ATTACHED

#### **Community Reinvestment Area Tax Exemption Agreement**

This Community Reinvestment Area Tax Exemption Agreement (this "<u>Agreement</u>") 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 "<u>City</u>"), and NORTHCROWN 56 MCMICKEN LLC, an Ohio limited liability company and affiliate of Northcrown Property LLC (the "<u>Company</u>").

#### **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 "<u>Statute</u>").
- 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 "<u>Commercial Policy Ordinance</u>"), which sets forth certain additional policies, conditions and limitations regarding newly constructed or remodeled commercial and residential structures in the Community Reinvestment Area.
- D. The Company is the sole owner of certain real property within the City, located at 56 E. McMicken Avenue, Cincinnati, Ohio 45202 (the "Property"), as further described in <u>Exhibit A</u> (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 "<u>Excluded Property</u>"), 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.
- E. The Company has proposed to remodel a building located on the Property, 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.
- F. 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.
- G. 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.
- H. The Company has submitted to the City an application for this tax exemption agreement (the "<u>Application</u>"), a copy of which is attached hereto as <u>Exhibit B</u>, has remitted with the Application (i) the City application fee of One Thousand Two Hundred Fifty Dollars (\$<u>1,250</u>) 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.

- I. 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.
- J. 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.
- K. 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").
- L. 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 "<u>State</u>").
- M. 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.
- N. 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.
- O. 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.
- P. The Company acknowledges that Streetcar operations in the Central Business District and Overthe-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.
- Q. 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.

- R. This Agreement has been authorized by Ordinance No. \_\_\_\_\_-2021, passed by Cincinnati City Council on \_\_\_\_\_\_, 2021.
- S. 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:

Project. Upon issuance of the necessary zoning and building approvals, the Section 1. Company agrees to remodel the existing structure to create approximately: 1,081 square feet of commercial space, and 6,829 square feet of residential space consisting of 13 apartments on the Property (the "Improvements") at an estimated aggregate cost of \$1,501,184, to commence after the execution of this Agreement and to be completed no later than April 1, 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 remodeling shall be in compliance with applicable building code requirements and zoning regulations. 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.

Real Property Tax Exemption. Subject to the satisfaction of the conditions set Section 2. forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (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 fifteen (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 and (D) 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 <u>assessed</u>, as opposed to years in which taxes are <u>billed</u>. No exemption shall commence after tax year 2022 nor extend beyond the <u>earlier</u> of (i) tax year 2036 or (ii) the end of the 15<sup>th</sup> year of exemption.

Section 3. <u>Use: Maintenance: Inspections</u>. 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. <u>Compliance with Board of Education Agreement</u>. 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. <u>Duty of Company to Pay Taxes</u>. 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. <u>Company Certifications Regarding Non-Delinquency of Tax Obligations</u>. 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.

Covenant of Satisfaction of Tax and Other Obligations. In accordance with Ohio Section 7. 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. <u>City Cooperation</u>. 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. <u>Continuation of Exemptions</u>. 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. <u>City Not Liable</u>. 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.<sup>1</sup>

A. <u>Compliance with Small Business Enterprise Program</u>. 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 ("<u>CMC</u>") Section 323-1-S, "<u>SBEs</u>"). 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-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.

(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. <u>Remedies for Noncompliance with Small Business Enterprise Program</u>. 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

<sup>&</sup>lt;sup>1</sup> 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.

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. <u>Jobs</u>. 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. <u>Job Creation and Retention</u>.

A. <u>Jobs to be Created by Company</u>. The Company agrees to use its best efforts to create (i) 10 full-time permanent jobs and (ii) 30 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. <u>Company's Estimated Payroll Increase</u>. The Company's increase in the number of employees will result in approximately (i) \$312,000 of additional annual payroll with respect to the full-time permanent jobs and (ii) \$1,200,000 of additional annual payroll prior to the completion of the Project with respect to the full-time temporary construction jobs.

C. <u>Community Reinvestment Area Employment</u>. 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. <u>Posting Available Employment Opportunities</u>. 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. <u>Equal Employment Opportunity</u>. 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. <u>Compliance with Immigration and Nationality Act</u>. 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. <u>Default</u>. 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. <u>Annual Review and Report</u>. 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 <u>"Annual Review and Report</u>"). The Company shall submit information for the Annual Review and Report to the City no later than March 1 of each year.

#### Section 18. <u>Revocation</u>.

Generally. Pursuant to Ohio Revised Code Section 3735.68, the housing officer Α. 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. <u>Prior Statutory Violations</u>. 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. <u>False Statements; Penalties; Material Representations</u>.

A. <u>Generally</u>. 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.

Material Representations - Board of Education Agreement and VTICA. The Β. 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. <u>Conflict of Interest</u>. 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. <u>Annual Fee</u>. 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. <u>Discontinued Operations</u>. 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. <u>Notices</u>. 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:

Northcrown 56 McMicken LLC 131 E. McMicken Avenue Cincinnati, Ohio 45202 Attn: Jeremy Moore, Chief Operating Officer

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. <u>Acknowledgment of City Participation</u>. 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. <u>Entire Agreement</u>. 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. <u>Governing Law</u>. 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. <u>Waiver</u>. 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. <u>Severability</u>. 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. <u>Amendment</u>. This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 30. <u>Non-Assignment</u>. 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. <u>Recording</u>. At its election, the City may record this Agreement at the City's expense in the Hamilton County Recorder's Office.

Section 32. <u>Legislative Action Required</u>. 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. <u>Additional Representations and Warranties of Company</u>. 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. <u>Certification as to Non-Debarment</u>. 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. <u>Appeals</u>. 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. <u>Wage Enforcement</u>.

(i) <u>Applicability</u>. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained Chapter 326 (Wage Enforcement) of the Cincinnati Municipal Code (the "<u>Wage Enforcement</u> <u>Chapter</u>"). 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) <u>Required Contractual Language</u>. 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. <u>Legal Requirements</u>. 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. <u>Counterparts and Electronic Signatures</u>. 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 "<u>Effective Date</u>").

CITY OF CINCINNATI, an Ohio municipal corporation

# NORTHCROWN 56 MCMICKEN LLC, Error! Reference source not found.

By:	

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

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

Printed Name:	
---------------	--

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

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

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

Situated in the City of Cincinnati, County of Hamilton and State of Ohio:

All that part of Block three (3) of a subdivision made by James Findlay and J.C. and J. L. Ludlow and recorded in Book 49, Pages 420, 421, and 422 of the records of Hamilton County, Ohio and being Lot Number Eleven (11) in said Block Three (3) as subdivided by the Executors of James Findlay, deceased, a plat of which subdivision is recorded in Deed Book 70, Page 133 of said records,

PPN: 094-0005-0296-00 Property Address: 56 East McMicken Avenue, Cincinnati, Ohio 45202

## Exhibit B to CRA Agreement

APPLICATION FOR TAX EXEMPTION

TO BE ATTACHED



March 24, 2021

To: Mayor and Members of City Council

202101199

**From:** Paula Boggs Muething, City Manager

## Subject: Ordinance – Zone Changes for the Cincinnati Zoo and Botanical Garden

Transmitted is an Ordinance captioned:

AMENDING the official zoning map of the City of Cincinnati to rezone certain real property commonly known as 3502-3526 Vine Street, 3429-3447 Vine Street, and 3412-3416 Marmet Avenue in the Avondale neighborhood, and certain additional real property generally located at the southeast corner of Vine Street and Erkenbrecher Avenue in the Corryville neighborhoods from the RMX, "Residential Mixed," and SF-4, "Single-Family," zoning districts to the PR, "Park and Recreation," zoning district to locate all of the Cincinnati Zoo and Botanical Garden properties within one consistent zoning district.

## Summary

The Cincinnati Zoo and Botanical Garden (CZBG) is currently almost entirely zoned Park and Recreation (PR). The requested changes in zoning are primarily a clean-up exercise as the property is already owned and maintained by the CZBG, which desires to have a consistent zoning district for their properties. A similar measure was done in 2015.

There are three requested zone changes:

- 1. The first is to rezone 2.575 acres along the east side of Vine Street between Tower Avenue and Beldare Avenue from Residential Mixed (RMX) to Park and Recreation (PR). This site contains the City Barn building, a community garden, and several open spaces that are planned to be turned into pocket parks for the neighborhood.
- 2. The second is to rezone 2.215 acres just north of the existing main parking lot entrance and pedestrian bridge over Vine Street from Residential Mixed (RMX) and Single-Family (SF-4) to Park and Recreation (PR). The eastern portion contains existing facilities and offices adjacent to the main zoo and will remain unchanged.
- 3. The third is to rezone 5.022 acres at the southeast corner of Vine Street and Erkenbrecher Avenue from Residential Mixed (RMX) to Park and Recreation (PR) to expand the parking lot from 433 spaces to over 700 spaces with solar panels, and for several homes owned by the CZBG which are to remain unchanged at this time.

The zone changes are consistent with both *Plan Cincinnati* (2012) and the *Avondale Quality of Life Plan* (2020) and the future development will be consistent with the existing surrounding built environment and adjacent zoning districts.

The Administration recommends Approval of this Ordinance.

cc: Katherine Keough-Jurs, AICP, Director Department of City Planning



# City of Cincinnati DBS An Ordinance No.\_\_\_\_\_\_\_ -2021

**AMENDING** the official zoning map of the City of Cincinnati to rezone certain real property commonly known as 3502-3526 Vine Street, 3429-3447 Vine Street, and 3412-3416 Marmet Avenue in the Avondale neighborhood, and certain additional real property generally located at the southeast corner of Vine Street and Erkenbrecher Avenue in the Corryville neighborhood from the RMX, "Residential Mixed," and SF-4, "Single-Family," zoning districts to the PR, "Park and Recreation," zoning district to locate all Cincinnati Zoo and Botanical Garden properties within one consistent zoning district.

WHEREAS, the Cincinnati Zoo and Botanical Garden ("CZBG") owns or controls certain real property in the Avondale neighborhood commonly known as 3502-3526 Vine Street, 3429-3447 Vine Street, and 3412-3416 Marmet Avenue, and certain additional real property in the Corryville neighborhood generally bound by Erkenbrecher Avenue, Euclid Avenue, East Shields Street, and Vine Street ("Properties"), which Properties are currently located in either an RMX, "Residential Mixed," zoning district or an SF-4, "Single-Family," zoning district; and

WHEREAS, CZBG has petitioned to rezone the Properties to the PR, "Park and Recreation," zoning district; and

WHEREAS, the proposed rezoning would result in one consistent zoning district across all of the Properties and would allow them to be developed and operated in a manner that is complimentary to the operation and development of adjacent properties owned or controlled by CZBG; and

WHEREAS, the proposed zone change is consistent with *Plan Cincinnati* (2012), including its "Compete" initiative with the goal to "[t]arget investment to geographic areas where there is already economic activity," (p. 141) and the "Sustain" initiative with the goal to "[c]reate a healthy environment and reduce energy consumption" (p.182); and

WHEREAS, at its regularly scheduled meeting on March 19, 2021, the City Planning Commission determined that the proposed zone change is in the interest of the public's health, safety, morals, and general welfare, and it recommended rezoning the Properties from the RMX, "Residential Mixed," and SF-4, "Single-Family," zoning districts to the PR, "Park and Recreation," zoning district; and

WHEREAS, a committee of Council held a public hearing on the proposed rezoning of the Properties following due and proper notice pursuant to Cincinnati Municipal Code Section 111-1, and the committee approved rezoning the Properties, finding it in the interest of the public's health, safety, morals, and general welfare; and

WHEREAS, the Council resolves to rezone the Properties from the RMX, "Residential Mixed," and SF-4, "Single-Family," zoning districts to the PR, "Park and Recreation," zoning district, finding it to be in the interest of the public's health, safety, morals, and general welfare; now, therefore,

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

Section 1. That the shape and area of the City of Cincinnati's official zoning map in the location of the real property commonly known as 3502-3526 Vine Street, 3429-3447 Vine Street, and 3412-3416 Marmet Avenue in the Avondale neighborhood, and in the location of the real property generally bound by Erkenbrecher Avenue, Euclid Avenue, East Shields Street, and Vine Street in the Corryville neighborhood, all of which properties are shown on the map attached hereto as Exhibit A and incorporated herein by reference, and each of which are respectively and more particularly described on the legal descriptions contained in Exhibits B, C, and D attached hereto and incorporated herein by reference, are hereby amended from the RMX, "Residential Mixed," and SF-4, "Single-Family," zoning districts to the PR, "Park and Recreation," zoning district.

Section 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2021

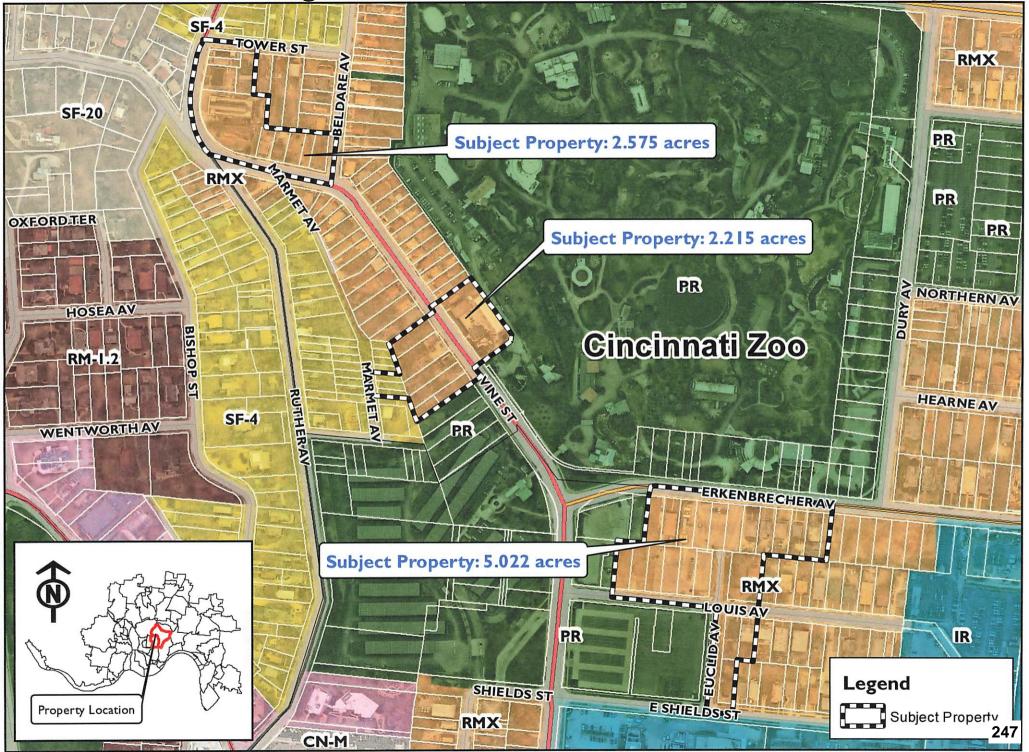
John Cranley, Mayor

Attest:

Clerk

# EXHIBIT A

# Exhibit A: Zone Changes for the Cincinnati Zoo in Avondale and Corryville



# EXHIBIT B

## CITY BARN 2.576 ACRE PROPOSED REZONING

Situate in City of Cincinnati, Hamilton County, Ohio, being a 2.576 acre Proposed Rezone Area from Zones "RMX" Residential to "PR" Parks and Recreation, said 2.576 acre Proposed Rezone Area being comprised of parcels conveyed to Cincinnati Zoo Properties LLC, The Zoological Society of Cincinnati, PFS Real Estate II LLC and portions of the right of way of Vine Street, Beldare Avenue and Tower Street and being more particularly described as follows:

Beginning in a point in the centerline intersection of of Vine Street and Beldare Avenue, said point being the TRUE PLACE OF BEGINNING of the Proposed Rezone Area herein described; thence the following 10 courses:

- 1. In the centerline of Vine Street, North 77° 20' 51" West, 436.62 feet to a point; thence
- 2. Continuing in said centerline of Vine Street, North 14° 58' 45" West, 105.83 feet to a point; thence
- 3. Continuing in said centerline of Vine Street, North 07° 04' 25" East, 107.16 feet to a point; thence
- 4. Continuing in said centerline of Vine Street, North 11° 58′ 36″ East, 154.29 feet to a point in the centerline of Tower Street; thence
- 5. In said centerline of Tower Street, South 84° 22' 41" East, 177.62 feet to a point; thence
- 6. Leaving said centerline of Tower Street, South 05° 52' 35" West, 155.39 feet to a point; thence
- 7. South 84° 22' 41" East, 49.99 feet to a point; thence
- 8. South 05° 52' 35" West, 100.00 feet to a point; thence
- 9. South 84° 22' 41" East, 225.00 feet to a point in the centerline of Beldare Avenue; thence
- In said centerline of Beldare Avenue, South 05° 52' 35" West, 157.59 feet to the TRUE PLACE OF BEGINNING of the Proposed Rezone Area herein described.

Containing 2.576 acres.

This Description is for rezoning purposes only and is based on partial field surveys, available documents and Tax Maps and is not the result of a complete field survey.



# EXHIBIT C

## FACILITIES 2.215 ACRE PROPOSED REZONING

Situate in City of Cincinnati, Hamilton County, Ohio, being a 2.215 acre Proposed Rezone Area from Zones "RMX" Residential and "SF-4" Single Family to "PR" Parks and Recreation, said 2.215 acre Proposed Rezone Area being comprised of parcels conveyed to Cincinnati Zoo Properties LLC, The Zoological Society of Cincinnati, City of Cincinnati,PFS Real Estate I LLC and a portion of the right of way of Vine Street and Marmet Avenue and being more particularly described as follows:

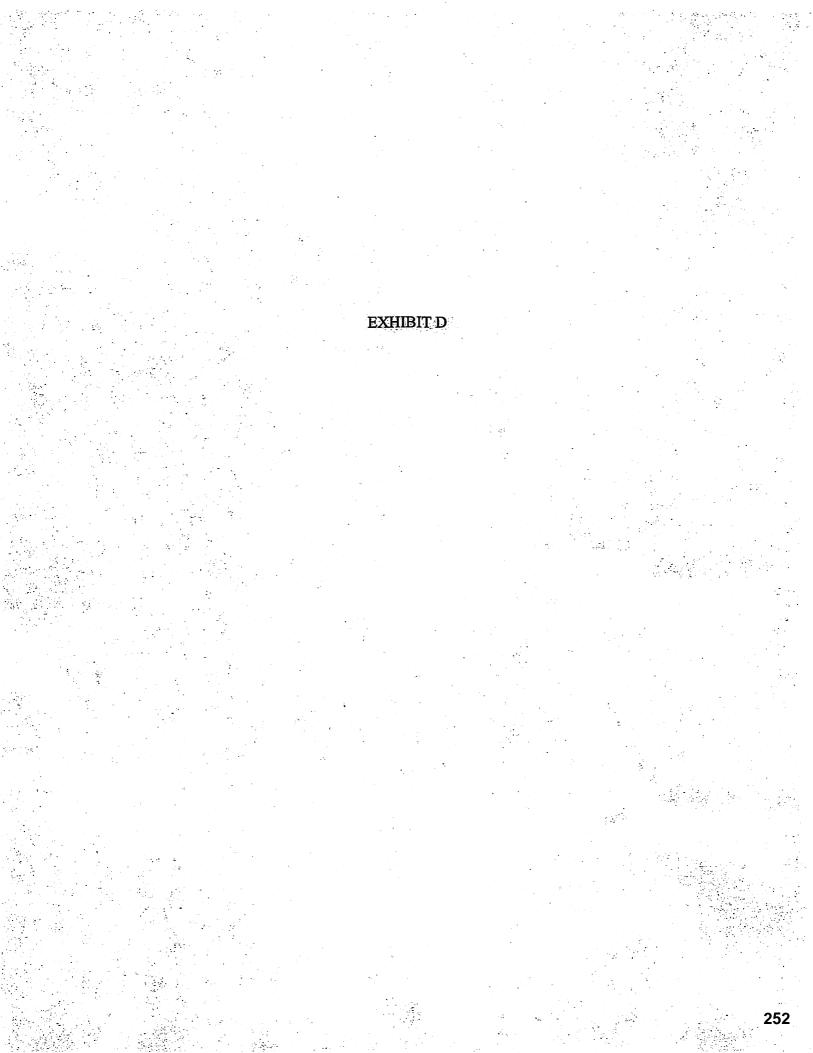
Beginning in a point in the northwesterly corner of a parcel conveyed to The Zoological Society of Cincinnati (Auditors Parcel 216-0042-0245) by deed recorded in Official Record 13365, Page 988, said point being the **TRUE PLACE OF BEGINNING** of the Proposed Rezone Area herein described; thence the following 12 courses:

- 1. South 35° 40' 14" East, 233.00 feet to a point; thence
- 2. South 54° 19' 46" West, 155.00 feet to a point in the centerline of Vine Street; thence
- 3. In said centerline of Vine Street, South 35° 40' 14" East, 33.48 feet to a point; thence
- 4. Leaving said centerline of Vine Street, South 54° 19' 33" West, 245.88 feet to a point; thence
- 5. North 19° 39' 26" West, 79.89 feet to a point; thence
- 6. North 84° 22' 13" West, 116.33 feet to a point in the centerline of Marmet Avenue; thence
- 7. In said centerline of Marmet Avenue, North 07° 25' 58" West, 75.00 feet to a point; thence
- 8. Leaving said centerline of Marmet Avenue, South 84° 22' 13" East, 98.77 feet to a point; thence
- 9. North 19° 39' 14" West, 99.43 feet to a point; thence
- 10. North 54° 19' 46" East, 174.11 feet to a point in said centerline of Vine Street; thence
- 11. In said centerline of Vine Street, North 35° 40' 14" West, 16.48 feet to a point; thence
- 12. Leaving said centerline of Vine Street, North 54° 19′ 46″ East, 155.00 feet to the TRUE PLACE OF BEGINNING of the Proposed Rezone Area herein described.

Containing 2.215 acres.

This Description is for rezoning purposes only and is based on partial field surveys, available documents and Tax Maps and is not the result of a complete field survey.





# PARKING FACILITIES 5.022 ACRE PROPOSED REZONING

Situate in City of Cincinnati, Hamilton County, Ohio, being a 5.022 acre Proposed Rezone Area from Zone "RMX" Residential to "PR" Parks and Recreation, said 5.022 acre Proposed Rezone Area being comprised of parcels conveyed to Cincinnati Zoo Properties LLC, 21 Erkenbrecher LLC, 43 Erkenbrecher LLC, PFS Real Estate I LLC, PFS Real Estate II LLC and portions of the right of way of Erkenbrecher Avenue, Louis Avenue, Euclid Avenue and Shields Street and being more particularly described as follows:

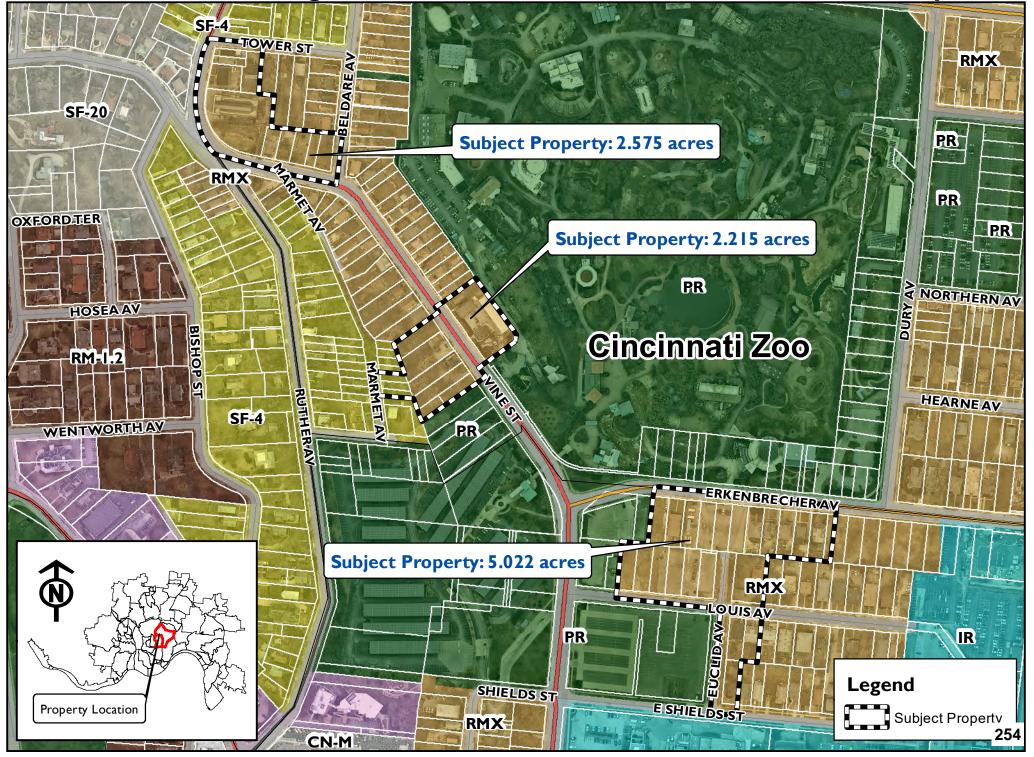
Beginning in the centerline of intersection of Euclid Avenue and Louis Avenue and being the **TRUE PLACE OF BEGINNING** of the Proposed Rezone Area herein described; thence the following 12 courses:

- 1. In said centerline of Louis Avenue, North 84° 17' 55" West, 331.33 feet to a point; thence
- 2. Leaving said centerline of Louis Avenue, North 05° 37' 15" East, 175.00 feet to a point; thence
- 3. South 84° 17' 55" East, 82.89 feet to a point; thence
- 4. North 06° 13' 54" East, 180.25 feet to a point in the centerline of Erkenbrecher Avenue; thence
- 5. In said centerline of Erkenbrecher Avenue, South 84° 17' 17" East, 575.00 feet to a point; thence
- Leaving said centerline of Erkenbrecher Avenue, South 06° 13' 54" West, 180.11 feet to a point; thence
- 7. North 84° 17' 51" West, 196.73 feet to a point; thence
- 8. South 05° 33' 45" West, 336.80 feet to a point; thence
- 9. North 84° 21' 38" West, 50.00 feet to a point; thence
- 10. South 05° 33' 45" West, 167.72 feet to a point in the centerline of Shields Street; thence
- 11. In said centerline of Shields Street, North 84° 18' 51" West, 80.00 feet to a point in said centerline of Euclid Avenue; thence
- 12. In said centerline of Euclid Avenue, North 05° 33' 45" East, 329.47 feet to the TRUE PLACE OF BEGINNING of the Proposed Rezone Area herein described.

Containing 5.022 acres.



# Exhibit A: Zone Changes for the Cincinnati Zoo in Avondale and Corryville



# CITY BARN 2.576 ACRE PROPOSED REZONING

Situate in City of Cincinnati, Hamilton County, Ohio, being a 2.576 acre Proposed Rezone Area from Zones "RMX" Residential to "PR" Parks and Recreation, said 2.576 acre Proposed Rezone Area being comprised of parcels conveyed to Cincinnati Zoo Properties LLC, The Zoological Society of Cincinnati, PFS Real Estate II LLC and portions of the right of way of Vine Street, Beldare Avenue and Tower Street and being more particularly described as follows:

Beginning in a point in the centerline intersection of of Vine Street and Beldare Avenue, said point being the **TRUE PLACE OF BEGINNING** of the Proposed Rezone Area herein described; thence the following 10 courses:

- 1. In the centerline of Vine Street, North 77° 20' 51" West, 436.62 feet to a point; thence
- 2. Continuing in said centerline of Vine Street, North 14° 58' 45" West, 105.83 feet to a point; thence
- 3. Continuing in said centerline of Vine Street, North 07° 04' 25" East, 107.16 feet to a point; thence
- 4. Continuing in said centerline of Vine Street, North 11° 58′ 36″ East, 154.29 feet to a point in the centerline of Tower Street; thence
- 5. In said centerline of Tower Street, South 84° 22' 41" East, 177.62 feet to a point; thence
- 6. Leaving said centerline of Tower Street, South 05° 52′ 35″ West, 155.39 feet to a point; thence
- 7. South 84° 22' 41" East, 49.99 feet to a point; thence
- 8. South 05° 52' 35" West, 100.00 feet to a point; thence
- 9. South 84° 22' 41" East, 225.00 feet to a point in the centerline of Beldare Avenue; thence
- 10. In said centerline of Beldare Avenue, South 05° 52′ 35″ West, 157.59 feet to the **TRUE PLACE OF BEGINNING** of the Proposed Rezone Area herein described.

Containing 2.576 acres.



# FACILITIES 2.215 ACRE PROPOSED REZONING

Situate in City of Cincinnati, Hamilton County, Ohio, being a 2.215 acre Proposed Rezone Area from Zones "RMX" Residential and "SF-4" Single Family to "PR" Parks and Recreation, said 2.215 acre Proposed Rezone Area being comprised of parcels conveyed to Cincinnati Zoo Properties LLC, The Zoological Society of Cincinnati, City of Cincinnati, PFS Real Estate I LLC and a portion of the right of way of Vine Street and Marmet Avenue and being more particularly described as follows:

Beginning in a point in the northwesterly corner of a parcel conveyed to The Zoological Society of Cincinnati (Auditors Parcel 216-0042-0245) by deed recorded in Official Record 13365, Page 988, said point being the **TRUE PLACE OF BEGINNING** of the Proposed Rezone Area herein described; thence the following 12 courses:

- 1. South 35° 40' 14" East, 233.00 feet to a point; thence
- 2. South 54° 19' 46" West, 155.00 feet to a point in the centerline of Vine Street; thence
- 3. In said centerline of Vine Street, South 35° 40' 14" East, 33.48 feet to a point; thence
- 4. Leaving said centerline of Vine Street, South 54° 19' 33" West, 245.88 feet to a point; thence
- 5. North 19° 39' 26" West, 79.89 feet to a point; thence
- 6. North 84° 22' 13" West, 116.33 feet to a point in the centerline of Marmet Avenue; thence
- 7. In said centerline of Marmet Avenue, North 07° 25' 58" West, 75.00 feet to a point; thence
- 8. Leaving said centerline of Marmet Avenue, South 84° 22' 13" East, 98.77 feet to a point; thence
- 9. North 19° 39' 14" West, 99.43 feet to a point; thence
- 10. North 54° 19' 46" East, 174.11 feet to a point in said centerline of Vine Street; thence
- 11. In said centerline of Vine Street, North 35° 40' 14" West, 16.48 feet to a point; thence
- 12. Leaving said centerline of Vine Street, North 54° 19′ 46″ East, 155.00 feet to the **TRUE PLACE OF BEGINNING** of the Proposed Rezone Area herein described.

Containing 2.215 acres.



# PARKING FACILITIES 5.022 ACRE PROPOSED REZONING

Situate in City of Cincinnati, Hamilton County, Ohio, being a 5.022 acre Proposed Rezone Area from Zone "RMX" Residential to "PR" Parks and Recreation, said 5.022 acre Proposed Rezone Area being comprised of parcels conveyed to Cincinnati Zoo Properties LLC, 21 Erkenbrecher LLC, 43 Erkenbrecher LLC, PFS Real Estate I LLC, PFS Real Estate II LLC and portions of the right of way of Erkenbrecher Avenue, Louis Avenue, Euclid Avenue and Shields Street and being more particularly described as follows:

Beginning in the centerline of intersection of Euclid Avenue and Louis Avenue and being the **TRUE PLACE OF BEGINNING** of the Proposed Rezone Area herein described; thence the following 12 courses:

- 1. In said centerline of Louis Avenue, North 84° 17' 55" West, 331.33 feet to a point; thence
- 2. Leaving said centerline of Louis Avenue, North 05° 37' 15" East, 175.00 feet to a point; thence
- 3. South 84° 17' 55" East, 82.89 feet to a point; thence
- 4. North 06° 13' 54" East, 180.25 feet to a point in the centerline of Erkenbrecher Avenue; thence
- 5. In said centerline of Erkenbrecher Avenue, South 84° 17' 17" East, 575.00 feet to a point; thence
- 6. Leaving said centerline of Erkenbrecher Avenue, South 06° 13′ 54″ West, 180.11 feet to a point; thence
- 7. North 84° 17' 51" West, 196.73 feet to a point; thence
- 8. South 05° 33' 45" West, 336.80 feet to a point; thence
- 9. North 84° 21' 38" West, 50.00 feet to a point; thence
- 10. South 05° 33' 45" West, 167.72 feet to a point in the centerline of Shields Street; thence
- 11. In said centerline of Shields Street, North 84° 18′ 51″ West, 80.00 feet to a point in said centerline of Euclid Avenue; thence
- 12. In said centerline of Euclid Avenue, North 05° 33' 45" East, 329.47 feet to the **TRUE PLACE OF BEGINNING** of the Proposed Rezone Area herein described.

Containing 5.022 acres.



# CPC ITEM # 6

# Honorable City Planning Commission Cincinnati, Ohio

March 19, 2021

**SUBJECT:** A report and recommendation on proposed zone changes from Residential Mixed (RMX) to Park and Recreation (PR) along Erkenbrecher Avenue and Euclid Avenue in Corryville, from Residential Mixed (RMX) and Single-Family (SF-4) to Park and Recreation (PR) at 3429-3447 Vine Street and 3412-3416 Marmet Avenue in Avondale, and from Residential Mixed (RMX) to Park and Recreation (PR) at 3502 to 3526 Vine Street in Avondale.

# **GENERAL INFORMATION:**

Location:East of Vine Street between Tower Street and Beldare Avenue, east and west of Vine<br/>Street just north of the existing zoo main parking lot entrance, and the southeast corner of<br/>Vine Street and Erkenbrecher Avenue.Petitioner:Jeff Koehn, IBI Group (representing the Cincinnati Zoo)

Petitioner's Address: 23 Triangle Park Drive, Cincinnati, Ohio 45246

# ATTACHMENTS:

Provided in addition to this report are the following attachments:

- Exhibit A Location Map
- Exhibit B Zone Change Applications, Legal Descriptions, and Plats
- Exhibit C Preliminary Site Plan for the expanded parking lot
- Exhibit D Coordinated Site Review Letters
- Exhibit E Letters of support from Avondale and Corryville Community Councils

# BACKGROUND:

The Cincinnati Zoo and Botanical Garden (CZBG) is currently almost entirely zoned Park and Recreation (PR). The requested changes in zoning are primarily a clean-up exercise as the property is already owned and maintained by the CZBG, which desires to have a consistent zoning district for their properties. A similar measure was done in 2015 for the existing parking lot at the southeast corner of Vine Street and Erkenbrecher Avenue and for the remainder of the Dury Avenue parking lot, which was already being used as a parking lot.

There are three requested zone changes:

- 1. The first is to rezone 2.575 acres along the east side of Vine Street between Tower Avenue and Beldare Avenue from Residential Mixed (RMX) to Park and Recreation (PR). This site contains the City Barn building, a community garden, and several open spaces that are planned to be turned into pocket parks for the neighborhood. It also contains an apartment building that is being converted on the inside for long-term storage and for seasonal decorations.
- 2. The second is to rezone 2.215 acres on both the east and west side of Vine Street, just north of the existing main parking lot entrance and pedestrian bridge over Vine Street from Residential Mixed (RMX) and Single-Family (SF-4) to Park and Recreation (PR). The eastern portion contains existing facilities and offices adjacent to the main zoo and will remain unchanged. The western portion contains open space, including several mature trees, and a few houses maintained by the CZBG. There are no current plans to change this area, but there could be an approximately 40 space parking lot or a new entrance to the main parking lot to help with traffic sight-distance around the curve on Vine Street for cars turning left into the parking lot. Both options would be discussed with existing residents along Marmet Avenue prior to construction.

3. The third is to rezone 5.022 acres at the southeast corner of Vine Street and Erkenbrecher Avenue from Residential Mixed (RMX) to Park and Recreation (PR). The purpose of this is to create and expand the parking lot from 433 spaces to slightly over 700 spaces with solar panels, south of Erkenbrecher Avenue, west of Euclid Avenue, north of E. Shields Street, and east of Vine Street. The parking lot plans include extending Euclid Avenue to Erkenbrecher Avenue with a new traffic signal, adding a right hand turn lane on eastbound Erkenbrecher Avenue to Euclid Avenue and Erkenbrecher Avenue, and adding a right hand turn lane on E. Shields Street to Vine Street. This requested zone change also includes several houses along Erkenbrecher Avenue, which are to remain unchanged at this time.

# **ADJACENT LAND USE AND ZONING:**

For the first zone change containing the City Barn site, the existing zoning and land use surrounding the subject properties are as follows:

North:Single-Family (SF-4) – Vacant land and single-family homesEast:Residential Mixed (RMX) – Single and two-family homesSouth:Residential Mixed (RMX) – Single and two-family homesWest:Single-Family (SF-20) – Single-family homes

For the second zone change containing the facilities site, the existing zoning and land use surrounding the subject properties are as follows:

- North: Residential Mixed (RMX) Single and two-family homes
- East: Park and Recreation (PR) CZBG
- South: Park and Recreation (PR) CZBG main parking lot
- West: Single-Family (SF-4) Single-family homes

For the third zone change containing the proposed parking lot expansion, the existing zoning and land use surrounding the subject properties are as follows:

- North: Residential Mixed (RMX) Single and two-family homes
- East: Park and Recreation (PR) CZBG
- South: Institutional Residential (IR) Cincinnati Veterans Affairs Hospital
- West: Park and Recreation (PR) CZBG main parking lot

# **PUBLIC COMMENT:**

City Planning Staff held a virtual public staff conference on February 25, 2021. Notice was sent to all property owners within 400 feet, and to the Avondale Community Council, Corryville Community Council, and Clifton Town Meeting as Clifton is within 400 feet of the proposed zone change. There were 23 people in attendance. After a brief presentation by the CZBG representatives concerning the changes in zoning, the conversation focused primarily on the future plans of the CZBG as they own several additional properties in the area.

There were initially concerns about the CZBG using eminent domain to acquire properties around them, but representatives from the CZBG stated that all purchases of additional land were done transparently by the CZBG with the existing property owner and that eminent domain cannot be used for this purpose.

There were questions about the future of the City Barn site, including an apartment building next to the City Barn facility. The CZBG representatives stated that the apartment building is being converted to storage but will still look like an apartment building, and that other parts of this property were planned to include additional parks for the neighborhood. There were also several questions and concerns from residents living on Marmet Avenue in regard to the CZBG's future plans for a potential parking lot or new entrance just north of the existing entrance, as there are mature trees and vegetation that buffer these properties from Vine Street and the CZBG parking lot. Representatives from the CZBG stated that there are required buffering standards, and that they would work with those property owners to ensure they would not be staring at car headlights from their home. They also restated that there are no plans to construct a parking lot or new entrance at this time but wanted to share those plans to be transparent with their neighbors.

There were also questions related to residents living along E. Shields Street and Louis Avenue, as the additional parking lot would potentially add to traffic on their streets, and how it was difficult for them to leave their neighborhood, especially if Louis Avenue west of Euclid Avenue was closed to through traffic. The CZBG representatives stated that improvements would be made with the signal at the extended Euclid Avenue and Erkenbrecher Avenue, along with a new right turn lane on E. Shields street to go north on Vine Street. It was also asked if the new traffic lights would be "no turn on red" similar to several other traffic lights in the area. They are currently proposed to allow right turns on red. That resident followed up by asking if the traffic lights would blink yellow and red at off-peak traffic hours, which is being discussed. Residential permit parking in this area was also briefly discussed.

At the end of the public staff conference, Mark Fisher of the CZBG asked staff to send everyone who signed up for the meeting his email address if they had any additional concerns about the proposed zone changes, or any other CZBG-related matter.

# ANALYSIS:

The CZBG has been open and transparent throughout this process, including using their name when purchasing properties and being approachable to working with surrounding residents and their concerns outside of the City process. The change in zoning will consolidate the CZBG properties into one consistent zoning district. The single PR zone designation will allow for easier building permit reviews for both the City and the CZBG.

The expansion of the parking lot east of Vine Street, south of Louis Street, and north of E. Shields Street towards Euclid Avenue will add additional parking spaces to slightly over 700 that should help alleviate the on-street parking congestion currently affecting the residents within the vicinity of the CZBG. The new expanded parking lot, bridge, and improvements to the surrounding streets will hopefully make visiting the CZBG a safer experience for patrons who will no longer have to cross a busy street to enter the premises.

The easement for the bridge, along with the proposed dedications of expanded right-of-way and the vacation of Louis Avenue west of Euclid Avenue will be reviewed by the City Planning Commission at a future meeting.

# **COORDINATED SITE REVIEW:**

The proposed zone changes were initially reviewed by the Coordinated Site Review team as project CPRE200007 as a Preliminary Design Review when the plans were for a parking garage instead of the proposed parking lot. No objections were raised over the zone change, but additional requirements needed to be met before permits could be obtained, such as vacating Louis Avenue west of Euclid Avenue, dedication plats for roadway improvements and an aerial easement for a new bridge over Erkenbrecher Avenue. Due to the CZBG's decreased revenues due to the COVID-19 global pandemic, the project was submitted again as CPRE210010 for a Development Design Review for a surface parking lot instead of a garage. Once again, no objections were raised, with the same requirements to obtain permits as before. Both letters are attached as Exhibit D.

# **CONSISTENCY WITH PLANS:**

# Plan Cincinnati (2012)

The proposed zone change is consistent with the Compete Initiative Area of *Plan Cincinnati* (2012), and the Goal to "target investment to geographic areas where there is already economic activity" (page 141). It is also consistent with the Sustain Initiative Area Goal to "create a healthy environment and reduce energy consumption" (page 182). The new parking lot and pedestrian entrance is a significant investment in the CZBG property and the addition of solar panels in the new parking lot will help them generate clean, renewable electricity.

# Avondale Quality of Life Plan (2020)

The proposed zone change is also consistent with the *Avondale Quality of Life Plan* (2020). The CZBG is listed as a partner to "help implement safety recommendations" (page 31). The proposed pedestrian bridge over Erkenbrecher Avenue will provide a safe way for patrons to get to the Zoo without crossing a busy intersection. It is also consistent with Strategy 8.E – "Resident Groups/ Block Clubs explore pilot pocket park network in Avondale for future expansion" (page 79). The proposed additional pocket parks along Vine Street between Tower Street and Beldare Avenue meet this goal, and the CZBG has been listed as a primary partner.

### **CONCLUSIONS:**

The proposed zone changes are appropriate as they are for property the CZBG already owns. Most of the properties already function as uses consistent with the PR zoning and besides the parking lot, are not proposed for any substantial changes to the built environment. The expansion of the Vine Street, Louis Avenue, E. Shields Street parking area towards Euclid Avenue will assist in alleviating the on-street parking congestion by adding additional parking spaces. The CZBG is making a meaningful effort to address the concerns of surrounding property owners and has been open and transparent regarding potential future plans in this area.

# **RECOMMENDATION:**

The staff of the Department of City Planning recommends that City Planning Commission take the following action:

**APPROVE** the proposed zone changes from Residential Mixed (RMX) to Park and Recreation (PR) along Erkenbrecher Avenue and Euclid Avenue in Corryville, from Residential Mixed (RMX) and Single-Family (SF-4) to Park and Recreation (PR) at 3429-3447 Vine Street and 3412-3416 Marmet Avenue in Avondale, and from Residential Mixed (RMX) to Park and Recreation (PR) at 3502 to 3526 Vine Street in Avondale.

Respectfully submitted:

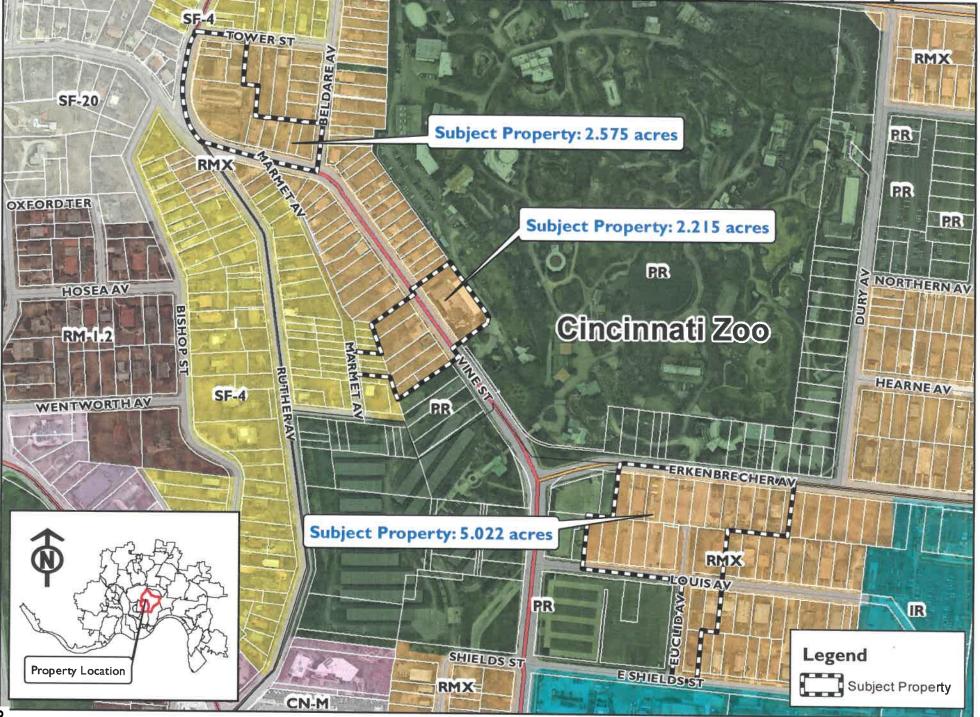
James Weaver, AICP, Senior City Planner Department of City Planning

Approved:

athenie Keargh Jus

Katherine Keough-Jurs, AICP, Director Department of City Planning

# Exhibit A: Zone Changes for the Cincinnati Zoo in Avondale and Corryville



# Exhibit B

# PETITION FOR CHANGE OF ZONING OF PROPERTY LOCATED IN THE CITY OF CINCINNATI, OHIO

To: The City of Cincinnati F	Vanning Commission	Date: <u>2021-02-03</u>
I hereby request your Hon	orable Body to amend the	Zoning Map of the City of Cincinnati by changing the area
described in the attached l	egal documentation and d	epicted on the attached plat from the <u>RM-X</u> Zone District to
the <u>PR</u> Zone District.		
Location of Property (Stree	et Address): <u>3516 Vine Str</u>	eet; Cincinnati, Ohio 45220
Area Contained in Property	<pre>/ (Excluding Streets): <u>1.769</u></pre>	acres
Present Use of Property: <u>C</u>	ity Barn, CZBG storage, two	o residences and vacant ground
Proposed Use of Property &	k Reason for Change: <u>City</u>	Barn, CZBG storage, residences and vacant ground. The
reason for the change is bri	ng these properties into th	e same zoning as the rest of the Zoo
Property Owner's Signature	- 673	0
Name Typed	: Mr. Mark Fisher; VP of Fa	cilities; Cincinnati Zoo & Botanical Garden
Address: <u>3400 Vine Street; (</u> Agent Signature:	Cincinnati, Ohio 45220 Pr	one: <u>513-559-7795</u>
	: <u>Mr. Jeffrey B. Koehn, PE;</u>	Director (D) Crown
Address: 23 Triangle Park Dr		<u>6 Phone: 513-942-3141</u>
Please Check if the Followin	g Items are Attached	
Application Fee X	Copies of Plat X	Copies of Metes and Bounds <u>X</u>



IBI GROUP 23 Triangle Park Drive – Suite 2300 Cincinnati OH 45246 USA tel 513 942 3141 fax 513 881 2263 ibigroup.com

# Memorandum

To/Attention	James Weaver	Date	February 3, 2021
From	Jeff Koehn, PE	Project No	104356
cc	Mark Fisher, File		
Subject	2021 CZBG Re-Zoning City Barn Submission		

Per our conversations, past emails and coordination with City Planning the Cincinnati Zoo and Botanical Garden (CZBG) intends to re-zone three groups of property owned by the CZBG from RM-X to PR. The three groups of property are referred to as: City Barn; Facilities; and Parking Facility and are shown on the attached exhibit. Each group will be submitted as a separate and unique application.

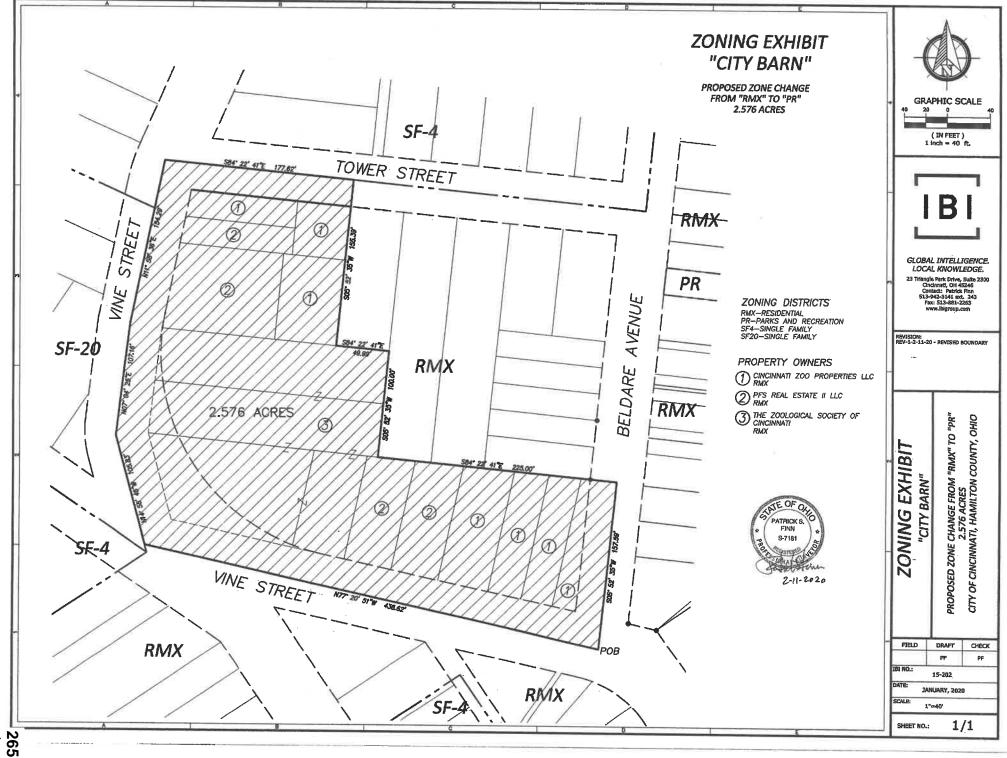
Please note that all properties that are included to this re-zone are Owned by the CZBG, as such we have only included a single signature of the CZBG VP as part of this application.

This submission is for the City Barn re-zoning.

Attached please find:

- 1. A petition to the City of Cincinnati Planning Commission requesting a re-zone from RM-X to PR;
- 2. An overall zoning map showing all three groups of property;
- 3. A zoning map for the City Barn property;
- 4. A check in the amount of \$1500, payable to the City of Cincinnati;
- 5. Metes and Bounds legal description of the area to be re-zoned;
- 6. Re-zoning plat;
- 7. An email of all of the above, including this memo has already been submitted.

Thanks in advance for your help. Should you have any questions / comments please give me a call at 513-317-3331.



# CITY BARN 2.576 ACRE PROPOSED REZONING

Situate in City of Cincinnati, Hamilton County, Ohio, being a 2.576 acre Proposed Rezone Area from Zones "RMX" Residential to "PR" Parks and Recreation, said 2.576 acre Proposed Rezone Area being comprised of parcels conveyed to Cincinnati Zoo Properties LLC, The Zoological Society of Cincinnati, PFS Real Estate II LLC and portions of the right of way of Vine Street, Beldare Avenue and Tower Street and being more particularly described as follows:

Beginning in a point in the centerline intersection of of Vine Street and Beldare Avenue, said point being the TRUE PLACE OF BEGINNING of the Proposed Rezone Area herein described; thence the following 10 courses:

- 1. In the centerline of Vine Street, North 77° 20' 51" West, 436.62 feet to a point; thence
- 2. Continuing in said centerline of Vine Street, North 14° 58' 45" West, 105.83 feet to a point; thence
- 3. Continuing in said centerline of Vine Street, North 07° 04' 25" East, 107.16 feet to a point; thence
- 4. Continuing in said centerline of Vine Street, North 11° 58' 36" East, 154.29 feet to a point in the centerline of Tower Street; thence
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- 10. In said centerline of Beldare Avenue, South 05° 52′ 35″ West, 157.59 feet to the TRUE PLACE OF BEGINNING of the Proposed Rezone Area herein described.

Containing 2.576 acres.



# PETITION FOR CHANGE OF ZONING OF PROPERTY LOCATED IN THE CITY OF CINCINNATI, OHIO

To: The City of Cincinnati Planning Commission	Date: 2021-02-03		
I hereby request your Honorable Body to amend the Zor	ning Map of the City of Cincinnati by changing the area		
described in the attached legal documentation and depi	cted on the attached plat from the <u>RM-X</u> Zone District to		
the <u>PR</u> Zone District.			
Location of Property (Street Address): <u>3448 Vine Street</u>	; Cincinnati, Ohio 45220		
Area Contained in Property (Excluding Streets): <u>1.882 ac</u>	res		
Present Use of Property: <u>Two residences converted into office; horticultural faciliites and vacant ground.</u>			
Proposed Use of Property & Reason for Change: <u>The use is unchanged from the above. The reason for the</u>			
change is to bring these properties into the same zoning as the rest of the Zoo			
Property Owner's Signature:			
Name Typed: Mr. Mark Fisher; VP of Facilities; Cincinnati Zoo & Botanical Garden			
Address: 3400 Vine Street; Cincinnati, Ohio 45220 Phon	e: <u>513-559-7795</u>		
Agent Signature:			
Name Typed: Mr. Jeffrey B. Koehn, PE; Director, IBI Group			
Address: 23 Triangle Park Drive; Cincinnati, Ohio 45246 Phone: 513-942-3141			
Please Check if the Following Items are Attached			
Application Fee X Copies of Plat X	Copies of Metes and Bounds X		

# Exhibit B



IBI GROUP 23 Triangle Park Drive – Suite 2300 Cincinnati OH 45246 USA tel 513 942 3141 fax 513 881 2263 ibigroup.com

# Memorandum

To/Attention	James Weaver	Date	February 3, 2021
From	Jeff Koehn, PE	Project No	104356
сс	Mark Fisher, File		
Subject	2021 CZBG Re-Zoning Facilities Submission		

Per our conversations, past emails and coordination with City Planning the Cincinnati Zoo and Botanical Garden (CZBG) intends to re-zone three groups of property owned by the CZBG from RM-X to PR. The three groups of property are referred to as: City Barn; Facilities; and Parking Facility and are shown on the attached exhibit. Each group will be submitted as a separate and unique application.

Please note that all properties that are included to this re-zone are Owned by the CZBG, as such we have only included a single signature of the CZBG VP as part of this application.

This submission is for the Facilities re-zoning.

Attached please find:

- 1. A petition to the City of Cincinnati Planning Commission requesting a re-zone from RM-X to PR;
- 2. An overall zoning map showing all three groups of property;
- 3. A zoning map for the City Barn property;
- 4. A check in the amount of \$1500, payable to the City of Cincinnati;
- 5. Metes and Bounds legal description of the area to be re-zoned;
- 6. Re-zoning plat;
- 7. An email of all of the above, including this memo has already been submitted.

Thanks in advance for your help. Should you have any questions / comments please give me a call at 513-317-3331.

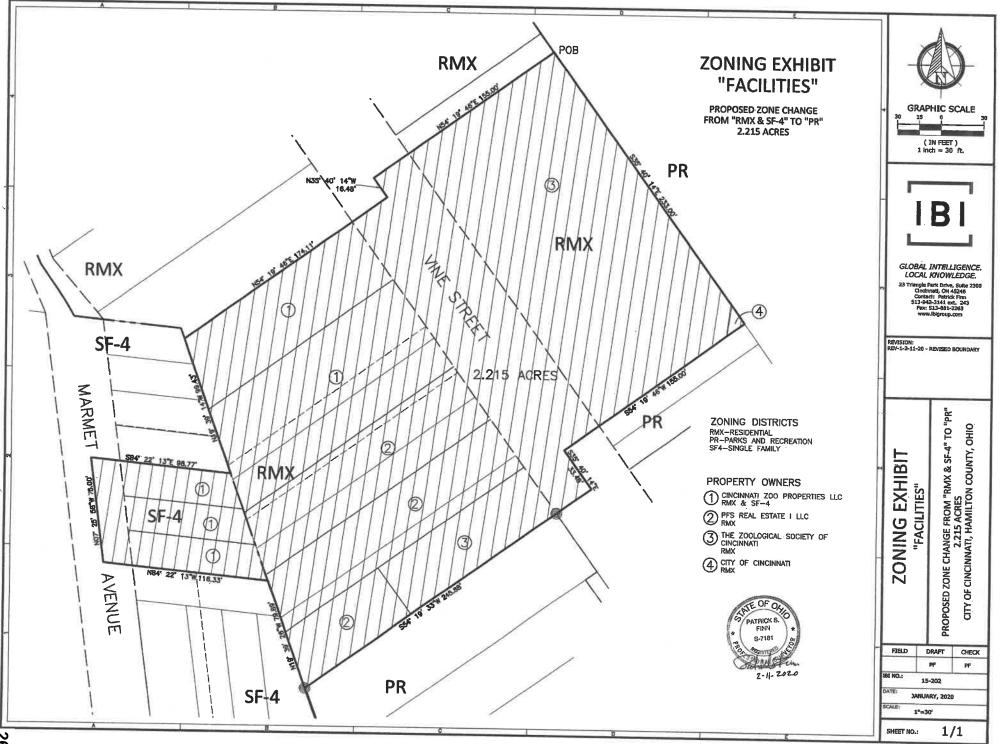


Exhibit B

# FACILITIES 2.215 ACRE PROPOSED REZONING

Situate in City of Cincinnati, Hamilton County, Ohio, being a 2.215 acre Proposed Rezone Area from Zones "RMX" Residential and "SF-4" Single Family to "PR" Parks and Recreation, said 2.215 acre Proposed Rezone Area being comprised of parcels conveyed to Cincinnati Zoo Properties LLC, The Zoological Society of Cincinnati, City of Cincinnati, PFS Real Estate I LLC and a portion of the right of way of Vine Street and Marmet Avenue and being more particularly described as follows:

Beginning in a point in the northwesterly corner of a parcel conveyed to The Zoological Society of Cincinnati (Auditors Parcel 216-0042-0245) by deed recorded in Official Record 13365, Page 988, said point being the TRUE PLACE OF BEGINNING of the Proposed Rezone Area herein described; thence the following 12 courses:

- 1. South 35° 40' 14" East, 233.00 feet to a point; thence
- 2. South 54° 19' 46" West, 155.00 feet to a point in the centerline of Vine Street; thence
- 3. In said centerline of Vine Street, South 35° 40' 14" East, 33.48 feet to a point; thence
- 4. Leaving said centerline of Vine Street, South 54° 19' 33" West, 245.88 feet to a point; thence
- 5. North 19° 39' 26" West, 79.89 feet to a point; thence
- 6. North 84° 22' 13" West, 116.33 feet to a point in the centerline of Marmet Avenue; thence
- 7. In said centerline of Marmet Avenue, North 07° 25' 58" West, 75.00 feet to a point; thence
- 8. Leaving said centerline of Marmet Avenue, South 84° 22' 13" East, 98.77 feet to a point; thence
- 9. North 19° 39' 14" West, 99.43 feet to a point; thence
- 10. North 54° 19' 46" East, 174.11 feet to a point in said centerline of Vine Street; thence
- 11. In said centerline of Vine Street, North 35° 40' 14" West, 16.48 feet to a point; thence
- 12. Leaving said centerline of Vine Street, North 54° 19' 46" East, 155.00 feet to the TRUE PLACE OF BEGINNING of the Proposed Rezone Area herein described.

Containing 2.215 acres.



# PETITION FOR CHANGE OF ZONING OF PROPERTY LOCATED IN THE CITY OF CINCINNATI, OHIO

To: The City of Cincinnati F	Planning Commission	Date: 2021-02-03
I hereby request your Hon	orable Body to amend the Z	oning Map of the City of Cincinnati by changing the area
described in the attached	legal documentation and dep	picted on the attached plat from the <u>RM-X</u> Zone District to
the <u>PR</u> Zone District.		
Location of Property (Stree	et Address): <u>35 Erkenbreche</u>	er; Cincinnati, Ohio 45220
Area Contained in Property	(Excluding Streets): <u>3.836</u> a	acres
Present Use of Property: <u>V</u>	acant ground and residentia	l buildings.
		g facility, vacant ground and residential buildings. The
	- 7	he same zoning as the rest of the Zoo
Property Owner's Signature		
Name Typed	: <u>Mr. Mark Fisher; VP of Faci</u>	lities; Cincinnati Zoo & Botanical Garden
Address: <u>3400 Vine Street; (</u>	Cincinnati, Ohio 45220 Pho	ne: <u>513-559-7795</u>
Agent Signature:	ul full	
Name Typed:	Mr. Jeffrey B. Koehn, PE; D	irector, IBI Group
Address: 23 Triangle Park Dr	ive; Cincinnati, Ohio 45246	Phone: <u>513-942-3141</u>
Please Check if the Followin	g Items are Attached	
Application Fee X	Copies of Plat <u>X</u>	Copies of Metes and Bounds X



IBI GROUP 23 Triangle Park Drive – Suite 2300 Cincinnati OH 45246 USA tel 513 942 3141 fax 513 881 2263 ibigroup.com

# Memorandum

To/Attention	James Weaver	Date	February 3, 2021
From	Jeff Koehn, PE	Project No	104356
CC	Mark Fisher, File		
Subject	2021 CZBG Re-Zoning Parking Facility Submission		

Per our conversations, past emails and coordination with City Planning the Cincinnati Zoo and Botanical Garden (CZBG) intends to re-zone three groups of property owned by the CZBG from RM-X to PR. The three groups of property are referred to as: City Barn; Facilities; and Parking Facility and are shown on the attached exhibit. Each group will be submitted as a separate and unique application.

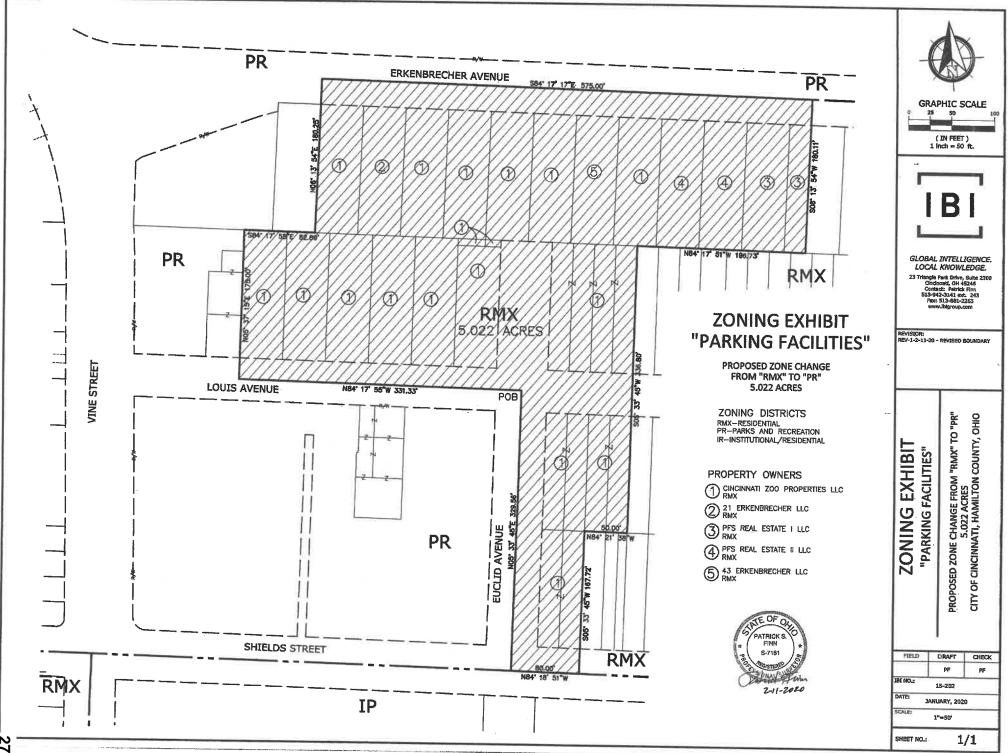
Please note that all properties that are included to this re-zone are Owned by the CZBG, as such we have only included a single signature of the CZBG VP as part of this application.

This submission is for the Parking Facility re-zoning.

Attached please find:

- A petition to the City of Cincinnati Planning Commission requesting a re-zone from RM-X to PR;
- 2. An overall zoning map showing all three groups of property;
- 3. A zoning map for the City Barn property;
- 4. A check in the amount of \$1500, payable to the City of Cincinnati;
- 5. Metes and Bounds legal description of the area to be re-zoned;
- Re-zoning plat;
- 7. An email of all of the above, including this memo has already been submitted.

Thanks in advance for your help. Should you have any questions / comments please give me a call at 513-317-3331.



# Exhibit B

# PARKING FACILITIES 5.022 ACRE PROPOSED REZONING

Situate in City of Cincinnati, Hamilton County, Ohio, being a 5.022 acre Proposed Rezone Area from Zone "RMX" Residential to "PR" Parks and Recreation, said 5.022 acre Proposed Rezone Area being comprised of parcels conveyed to Cincinnati Zoo Properties LLC, 21 Erkenbrecher LLC, 43 Erkenbrecher LLC, PFS Real Estate I LLC, PFS Real Estate II LLC and portions of the right of way of Erkenbrecher Avenue, Louis Avenue, Euclid Avenue and Shields Street and being more particularly described as follows:

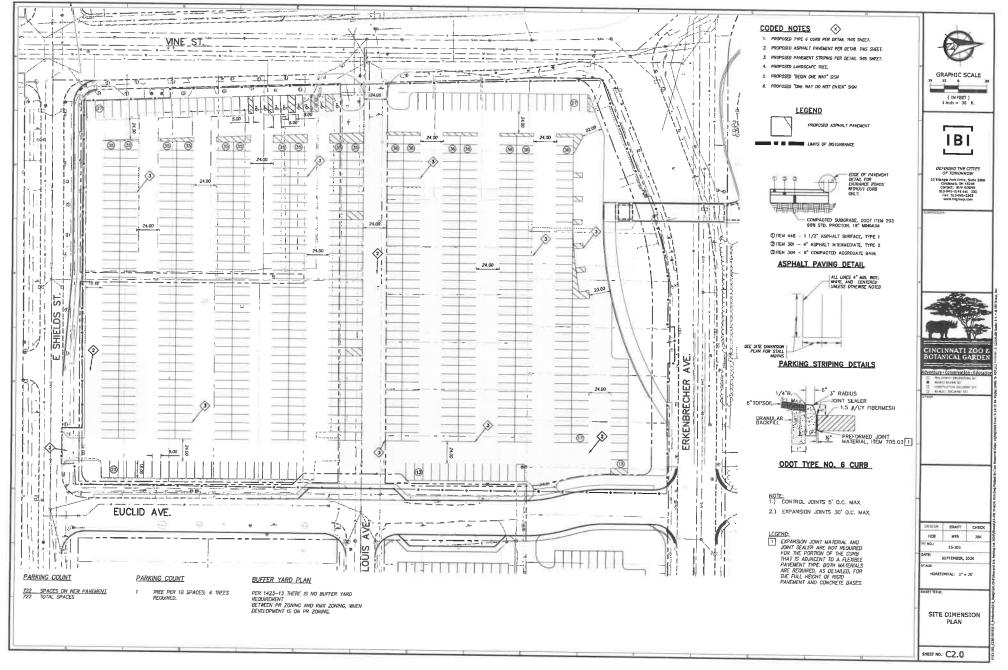
Beginning in the centerline of intersection of Euclid Avenue and Louis Avenue and being the **TRUE PLACE OF BEGINNING** of the Proposed Rezone Area herein described; thence the following 12 courses:

- 1. In said centerline of Louis Avenue, North 84° 17' 55" West, 331.33 feet to a point; thence
- 2. Leaving said centerline of Louis Avenue, North 05° 37' 15" East, 175.00 feet to a point; thence
- 3. South 84° 17' 55" East, 82.89 feet to a point; thence
- 4. North 06° 13' 54" East, 180.25 feet to a point in the centerline of Erkenbrecher Avenue; thence
- 5. In said centerline of Erkenbrecher Avenue, South 84° 17' 17" East, 575.00 feet to a point; thence
- 6. Leaving said centerline of Erkenbrecher Avenue, South 06° 13' 54" West, 180.11 feet to a point; thence
- 7. North 84° 17' 51" West, 196.73 feet to a point; thence
- 8. South 05° 33' 45" West, 336.80 feet to a point; thence
- 9. North 84° 21' 38" West, 50.00 feet to a point; thence
- 10. South 05° 33' 45" West, 167.72 feet to a point in the centerline of Shields Street; thence
- 11. In said centerline of Shields Street, North 84° 18' 51" West, 80.00 feet to a point in said centerline of Euclid Avenue; thence
- 12. In said centerline of Euclid Avenue, North 05° 33' 45" East, 329.47 feet to the **TRUE PLACE OF BEGINNING** of the Proposed Rezone Area herein described.

Containing 5.022 acres.









February 6, 2020

Mr. Jeff Koehn IBI Group 23 Triangle Park Drive Cincinnati, Ohio 45246

Re: 3350 Vine Street | CZBG Parking Facility (P) - (CPRE200007) Initial Comments and Recommendations

Dear Mr. Koehn,

This Preliminary Design Review letter informs you that our Advisory-TEAM has reviewed your proposed project at <u>3350 Vine Street</u> in the Community of Avondale. We hope that the information provided below will help you move forward with your project. Please see our initial feedback listed below. We strongly recommend that you return to us for either a Development Design Review or Technical Design Review before you get ready for permitting. Thank you for developing within the City of Cincinnati.

### **City Planning Department**

### Immediate Requirements to move forward with project:

 The property is zoned PR and RMX. The applicant is requesting a zone change to make the entire property PR, so a zone change is required. An application, survey and legal description are required with a fee of \$1,500.

### **Requirements to obtain Permits:**

- 1. Louis Avenue will need to be vacated, which requires a Vacation Plat approved by the City Planning Commission.
- 2. The extension of Euclid Avenue will require a Subdivision Improvement Plan and Dedication Plat approved by the City Planning Commission.
- 3. The property will need to be consolidated, which is done through Hamilton County.

### **Recommendations:**

- If the applicant wishes to continue the PR zoning to encompass this project, the Department of City Planning recommends that the applicant obtain approval from the Zoning Division of the Department of Buildings & Inspections to allow parking facilities in this location as an accessory use to the Zoo (cultural institution) north of Erkenbrecker Avenue. Otherwise, it is recommended that the applicant request a zone change to another zoning district that allows for parking facilities to be built.
- The Department of City Planning recommends that the applicant share their plans with the Avondale Community Council before any City notice of a change in zoning is sent out.

### Contact:

James Weaver | City Planning |513-352-4882 | james.weaver@cincinnati-oh.gov



### **Buildings & Inspections -- Zoning**

### Immediate Requirements to move forward with project:

- 1. The Zoning Administrator has determined that the proposed garage project will require Conditional Use approval.
- 2. Provide elevation drawings. Per Section 1416-07, the maximum height of structures in the Parks and Recreation (PR) zoning district is 35 feet. Based upon previous communication and meetings with the CZBG team, the proposed garage will exceed 35 feet in height. A Dimensional Variance will be required, but Zoning Staff cannot issue the required adjudication letter without accurately dimensioned drawings.

### **Requirements to obtain Permits:**

- Each of the three areas being rezoned will require recorded Consolidation Plats. For example, the parcels on the west side of Vine Street should be consolidated with the parcel containing the existing main parking lot unless future plans dictate otherwise. The resulting consolidated parcels should be under single ownership (of the CZBG-related entities) and control. Zoning Staff recognizes that this will not include the City land required for the garage project.
- 2. Provide descriptions of proposed land uses, site plans, and structures for the other two areas (excluding the garage) so that Zoning Staff can effectively evaluate proposed development. For example, the proposed structure on the south side of Tower Street that would be accessory to the repurposed car barn at 3516 Vine Street, as previously discussed with Jeff Koehn and Mark Fisher.
- 3. Provide a detailed Landscaping Plan(s) for the garage project and any other proposed development of the areas under review.

### **Recommendations:**

- 1. Consider proposing signage and graphics for zoning review prior to the hearing.
- 2. Per Section 1421-39, exterior lighting cannot exceed 20 feet in height.
- Contact:
  - Tre Sheldon | ZPE | 513-352-2422 | henry.sheldon@cincinnati-oh.gov

### Metropolitan Sewer District (MSD)

Immediate Requirements to move forward with project:

• None at this time.

### **Requirements to obtain Permits:**

1. Detention will be reviewed by Jeff Chen at jeff.chen@cincinnati-oh.gov or 513-244-1357 per Section 303 of the MSD Rules and Regulations.

### **Recommendations:**

None

### Contact:

Jim Wood | MSD | 513-352-4311 | jim.wood@cincinnati-oh.gov



# Stormwater Management Utility (SMU)

### Immediate requirements to move forward with project:

### None

### **Requirements to obtain Permits:**

- 1. Demolition/Abandonment Plan: highlight SMU infrastructure proposed to be abandoned.
- 2. Submit detention calculations and drainage maps.
- 3. Utility Plan: show Inlets to be relocated/modified. Inlet relocations/modifications will require separate SMU tap permits.
- 4. Submit an approved Erosion and Sediment control plan.
- 5. Include SMU's Standard Plan Notes (https://cincinnati-oh.gov/stormwater/constructionand-design/standards/standard-plan-notes-updated-july-2017/).

### **Recommendation:**

- 1. Specify materials for all proposed storm lines.
- 2. Any proposed/modified storm line in the public R/W must be in DIP or RCP material; show profile.

Contact:

Saidou Wane | SMU | 513-591-7746 | saidou.wane@cincinnati-oh.gov

### Water Works

### Immediate requirements to move forward with project:

 According to the Utility Plan submitted. The public water main in Louis Avenue will need to be abandoned and a new public water main will need to be installed in Euclid Avenue. Owner(s)/Developer(s) will need to have a Civil Engineer submit a Preliminary Application (PA) to Shawn Wagner 513.591.7877 or email Shawn.Wagner@gcww.cincinnati-oh.gov. Pipe materials and fittings will be determined through the PA process.

### **Requirements to obtain Permits:**

- 1. Greater Cincinnati Water Works will not approve any new building permits and water service branch(es) until the existing public water mains are abandoned and the new public water main is in service.
- Any existing water service branch not to be used for this development, must be properly disconnected at the owner's / developer's expense. Owner would be required to fill out the online FOD form at https://www.cincinnati-oh.gov/water/engineeringconstruction/forms-specifications/fod/ authorizing removal of the existing water service branch before any new water service can be sold.

### **Recommendations:**

- Owner(s)/Developer(s) will need to hire civil engineering company will perform the public water main design work to submit to Shawn Wagner, Greater Cincinnati Water Works, 591-7877.
- 2. If there are existing water service branches on this property is not to be used for this development, they must be properly disconnected at the owner's / developer's expense. Owner would be required to fill out the online FOD form at https://www.cincinnati-oh.gov/water/engineering-construction/forms-specifications/fod/ authorizing removal of



any existing water service branches before any new water service can be sold. Any questions contact 513-591-7837.

 The Owner/developer must have a licensed plumber that is bonded and certified with GCWW and fill out the Online Branch application https://www.cincinnatioh.gov/water/engineering-construction/forms-specifications/ for water service, any questions call (513-591-7836).

### **Contact:**

Bill Morris | WaterWorks | 513-591-7858 | bill.morris@gcww.cincinnati-oh.gov

# Fire Department

### Immediate Requirements to move forward with project:

1. Confirm that the closest two hydrants have fire flows of at least 1000 GPM at 20 PSI. Requirements to obtain Permits:

- 1. For this structure confirm that there are at least two fire hydrants that are within 400' from all parts of each structure.
- The closest hydrants are located at 3400 Vine St, 3390 Vine St, 28 Erkenbrecher Avenue, 52 Erkenbrecher Avenue, 210 Erkenbrecher Avenue, 7 Louis, 100 Louis 5 E. Shields, 99 E. Shields and Euclid
- 3. Fire Department Connections are to be shown and are to be within 50'of a fire hydrant, two or more Fire Department Connections will be required for the stadium and two for the garage.
- 4. If the Building is over 30 feet in height, show the standpipe. The standpipe spacing is to be in accordance to the requirements of the Fire Code.

5. Hydrants and FDC placement are not to block fire apparatus access to the structures. Sec. 1229-5. - Location of Buildings and Structures.

- 6. Confirm that the Fire Department Connection is within 50'of a fire hydrant, two Fire Department Connections will be required for this structure due to access issues and the type of fire standpipe system that will be installed
- 7. Bidirectional antenna for fire department communication maybe required for the structure.

### **Recommendations:**

1. Due to size of the structure, its location and its use it is strongly recommended that the owner install a second Fire Department Connection for the structure.

### **Contact:**

Fred Prather | Fire Dept. | 513-357-7595 | fred.prather@cincinnati-oh.gov

### Office of Environmental Sustainability (OES)

### Immediate Requirements to move forward with project:

None

### Requirements to obtain permits:

1. If this project will receive City qualified incentives, then the project must receive environmental approval.



- 2. If this project will receive City qualified incentives, then the parking garage must include electric vehicle parking stations.
- 3. Bike rack areas must be included in the site parking garage.
- 4. If this project will include a new City permanent right-of-way and/or utility easement (i.e., water and/or sewer), then each of these must receive environmental approval.
- 5. If more than 1,000-cubic yards of off-site sourced fill material will be used for this project, then the source of the fill material must receive environmental approval.

### **Recommendations:**

- 1. For any existing site buildings due to their anticipated age, asbestos, lead based paint, and other hazardous building materials should be surveyed and, if needed, abatement should be conducted following all applicable regulations prior to their demolition.
- 2. The use of trees in the landscape design should be included to enhance urban forestry.
- The use of non-impervious surfaces should be maximized to the extent practical in the design.

### Contact:

Howard Miller | OES | 513-352-6999 | howard.miller@cincinnati-oh.gov

### **Police Department**

Immediate Requirements to move forward with project:

- None at this time.
- **Requirements to obtain Permits:**

No Comments.

**Recommendations:** 

None

Contact:

- Matt Hammer | Police Dept. | 513-478-2257 | matt.hammer@cincinnati-oh.gov
- Brandon Kyle | Police Dept. | brandon.kyle@cincinnati-oh.gov

### **Health Department**

Immediate Requirements to move forward with project:

None

**Requirements to obtain Permits:** 

1. No need for Health review for project as proposed.

- **Recommendations:** 
  - None

Contact:

Trisha Blake | Health Dept. | 513-352-2447 | trisha.blake@cincinnati-oh.gov



# Department of Transportation & Engineering (DOTE)

Immediate Requirements to move forward with project:

None

### **Requirements to obtain Permits:**

- 1. Continue to work with DOTE on developing plans.
- 2. No encroachments, including foundations, are permitted in the right of way.
- 3. All proposed walk must be 10' minimum in all areas the where there are roadway improvements.
- 4. Driveway aprons must meet City Standards.
- 5. All unused drive apron needs to be removed.
- 6. All work in the right of way requires a DOTE permit.
- 7. Addressing to be assigned by dteaddress@cincinnati-oh.gov prior to submitting for building permit.

### **Recommendations:**

None

Contact:

Morgan Kolks | DOTE | 513-352-5285 | morgan.kolks@cincinnati-oh.gov

### **Buildings & Inspections – Buildings**

### Immediate Requirements to move forward with project:

- No issues at this time.
- **Requirements to obtain Permits:** 
  - None

**Recommendations:** 

None

Contact:

Robert Martin | B&I Plans Exam | 513-352-2456 | robert.martin@cincinnati-oh.gov

### Department of Community & Economic Development (DCED) Immediate Requirements to move forward with project:

None

- **Requirements to obtain Permits:** 
  - None

**Recommendations:** 

None

Contact:

Joseph Malek | DCED | 513-352-6129 | joseph.malek@cincinnati-oh.gov

# Exhibit D



### Law Department

Immediate Requirements to move forward with project:

- 1. Vacation and sale of City ROW requires:
  - o Coordinated Report
  - o Appraisal
  - o Certificate of Title
  - o City Planning Commission Approval
  - o City Council Approval
- 2. Dedication of new ROW is subject to the subdivision process and requires City Planning Commission approval and acceptance by City Council.

**Requirements to obtain Permits:** 

None

**Recommendations:** 

None

Contact:

Charles Martinez | Law | 513-352-3359 | <u>charles.martinez@cincinnati-oh.gov</u>

This letter is not intended as the City's final approval of your project, but rather as an initial review and consultation to provide feedback from the City's various departments and to better coordinate between the City and developer. We hope you find this process both forthcoming and helpful.

Sincerely, Lace act Rodney D. Ringer Development Manager

RDR: rdr



February 5, 2021

Mr. Jeff Koehn IBI Group 23 Triangle Park Drive Cincinnati, Ohio 45246

Re: 3350 Vine Street | CZBG Parking Facility (D) - (CPRE210010) Final Recommendations

Dear Mr. Koehn,

This letter is to inform you that our CSR Advisory-TEAM and CSPRO Committee has reviewed your proposed project at <u>3350 Vine Street</u> in the Community of Avondale. The information provided is the recommendations of the City of Cincinnati and must be followed as you move forward with your project. As a reminder, we will have a <u>WebEx conference call meeting</u> with you on <u>February 9, 2021 @ 1:30 pm</u> to discuss this information. Please see the feedback listed below. Thank you for developing within the City of Cincinnati.

# **City Planning Department**

# Immediate Requirements to move the project forward:

1. The property is zoned PR and RMX. The applicant is requesting a **zone change to make the entire property PR, so a zone change is required**. An application, survey and legal description are required (zoning goes to the street centerline) with a fee of \$1,500.

### **Requirements to obtain permits:**

- 1. Louis Avenue will need to be vacated, which requires a Vacation Plat approved by the City Planning Commission.
- 2. The extension of Euclid Avenue will require a Subdivision Improvement Plan and
- 3. Dedication Plat approved by the City Planning Commission.
- 4. The property will need to be consolidated, which is done through Hamilton County if new lots are not being created.

### **Recommendations:**

1. The Department of City Planning recommends that the applicant share their plans with the Avondale Community Council and Clifton Town Meeting along with the Corryville Community Council before any City notice of a change in zoning is sent out.

### **Contact:**

James Weaver | City Planning |513-352-4882 | james.weaver@cincinnati-oh.gov

# Buildings & Inspections – Zoning

# Immediate Requirements to move the project forward:

- 1. Rezoning to PR approved.
- 2. Recorded Consolidation Plat for entire contiguous parking lot (preexisting and new). Please confirm what City land will still be required for the parking lot project now that the garage is no longer proposed.



- 3. Recorded Covenant approved as to form by the Law Department limiting the use of the Plat exclusively for accessory parking use for the CZBG.
- 4. Per Section 1425-29 (Parking Lot Landscaping), provide a Landscape Plan that provides a perimeter landscape area of at least 3 feet around the entirety of the parking lot. Provide at least 1 tree, 2 inches or more in caliper, for every 10 parking spaces. The submitted Site Dimension Plan indicates that only 4 trees are required. 722 parking spaces are proposed, so 72 trees will be required. Please revise accordingly.
- 5. Per Section 1421-39, exterior lighting cannot exceed 20 feet in height and must be shielded to ensure that all light is directed away from adjacent properties and public rights-of-way. Provide a Lighting Plan and photometric measurements to show that light spill will not affect neighboring residential properties.

# Requirements to obtain permits:

• None.

# **Recommendations:**

- You have indicated that no work is proposed for the Facilities area, but you have not indicated the proposed work for the City Barn area. Please provide descriptions of proposed land uses, site plans, and structures so that Zoning Staff can effectively evaluate proposed development. For example, the proposed structure on the south side of Tower Street as previously discussed with Jeff Koehn and Mark Fisher would need to be accessory to the repurposed car barn at 3516 Vine Street.
- 2. Consider submitting any proposed signage and graphics for zoning review prior to applying for sign permit(s).

# Contact:

Tre Sheldon | ZPE | 513-352-2422 | henry.sheldon@cincinnati-oh.gov

# Metropolitan Sewer District (MSD)

### Immediate Requirements to move the project forward:

None

### Requirements to obtain permits:

- Detention will be reviewed by Jeff Chen at jeff.chen@cincinnati-oh.gov or 513-244-1357 per Section 303 of the MSD Rules and Regulations. For additional site storm water requirements within the City of Cincinnati, contact the Stormwater Management Utility (SMU) at 513.591.5050.
- 2. For information on sewer abandonment please contact Rob Kern at 513-244-5588 or rob.kern@cincinnati-oh.gov
- 3. Any ground disturbance or grading above or around the MSD sewer will require a permit. Contact Steve Parker at steven.parker@cincinnati-oh.gov or 513-244-1351 for assistance.

### Recommendations

None

Contact:

Jim Wood | MSD | 513-352-4311 | jim.wood@cincinnati-oh.gov



# Stormwater Management Utility (SMU)

# Immediate Requirements to move the project forward:

### None

# Requirements to obtain permits:

- 1. Submit detention calculations.
  - o Submit Utility Plan:
- 2. Label all proposed storm lines' size and material.
- 3. Show slopes for all pipes
- 4. Submit grading plan:
- 5. Show existing and proposed contours
- 6. Runoff from all pavements must be captured and conveyed to the stormwater system. Only 800 sf of pavement may sheet flow to the public R/W.
- 7. Submit an Erosion/Sediments control plan.
- 8. Follow SMU's standard https://cincinnati-oh.gov/stormwater/construction-and-design/standards/sediment-and-erosion-control/
- Include SMU standard Plans Notes https://www.cincinnatioh.gov/stormwater/construction-and-design/standards/smu-standard-plan-notes-july-2019/
- 10. Stormwater as-builts will be required for this project.

# **Recommendation:**

- None
- Contact:
  - Josh Snow | SMU | 513-591-5050 | joshua.snow@cincinnati-oh.gov

# Water Works

# Immediate Requirements to move the project forward:

 According to the Utility Plan submitted. The public water main in Louis Avenue will need to be abandoned and a new public water main will need to be installed in Euclid Avenue. Owner(s)/Developer(s) will need to have a Civil Engineer submit a Preliminary Application (PA) to Shawn Wagner 513.591.7877 or email Shawn.Wagner@gcww.cincinnati-oh.gov. Pipe materials and fittings will be determined through the PA process.

### Requirements to obtain permits:

- 1. Greater Cincinnati Water Works will not approve any new building permits and water service branch(es) until the existing public water mains are abandoned and the new public water main is in service.
- 2. Any existing water service branch not to be used for this development, must be properly disconnected at the owner's / developer's expense. Owner would be required to fill out the online Discontinuance Form (FOD) at https://www.cincinnati-oh.gov/water/engineering-construction/forms-specifications/fod/ authorizing removal of the existing water service branch before any new water service can be sold. Any questions contact 513-591-7837.
- 3. Abandoned branches will require a drawing showing which branches are to be physically removed from the main. Each branch will need to show the branch number. Submit to Shawn Wagner at Shawn.Wagner@gcww.cincinnati-oh.gov.

### **Recommendations:**

1. Owner(s)/Developer(s) will need to hire civil engineering company will perform the public water main design work to submit to Shawn Wagner, Greater Cincinnati Water Works, 591-7877.



 The Owner/developer must have a licensed plumber that is bonded and certified with GCWW and fill out the Online Branch application https://www.cincinnatioh.gov/water/engineering-construction/forms-specifications/ for water service, any questions call (513-591-7836).

Contact:

Rick Roell | WaterWorks | 513-591-7858 | richard.roellr@gcww.cincinnati-oh.gov

# **Fire Department**

### Immediate Requirements to move the project forward:

1. For this development, confirm that there are at least two fire hydrants that are within 400' from all parts of the development.

### **Requirements to obtain Permits:**

- 1. The minimum fire flow is 1,800 gallons/per/minute (GPM) @ 20 pressure/per/square inch (psi) (138Kpa).
- 2. The closest Fire Hydrants to this project are <u>3400 Vine Street</u>, <u>3 Louis Ave</u>, <u>3 East</u> <u>Shields Avenue</u>, and <u>28 Erkenbrecher Avenue</u>.

### CFPC 1229-13 Access Streets, Roadways or Driveways

- 3. Access streets, roadways or driveways where required by Section 1229-11, shall conform to the following:
  - a. The surface shall be of sufficient strength and type to adequately support any fire division apparatus under any weather conditions.
  - b. The curve radii and grade elevations shall be such as to permit any fire department apparatus to negotiate curves and grades under any weather conditions.
- 4. OFC 503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), except for approved security gates in accordance with paragraph (C)(6)(503.6) of this rule, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).
- 5. **OFC 503.6** Security gates. The installation of security gates across a fire apparatus access road shall be approved by the fire chief. Where security gates are installed, they shall have an approved means of emergency operation. The security gates and the emergency operation shall be maintained operational at all times.
- 6. **OFC 503.2.5 Dead ends.** Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with an approved area for turning around fire apparatus.

# **Recommendations:**

None

Contact:

Robert Hart | Fire Dept. | 513-357-7597 | robert.hart@cincinnati-oh.gov

# Office of Environment and Sustainability (OES)

- Immediate Requirements to move forward with project:
  - None

# Requirements to obtain permits:

1. If this project will receive City qualified incentives, then it must receive OES environmental approval as per Administrative Regulation 30.



- 2. If this project will need to include a new City public right-of-way, then it must receive OES environmental approval as per Administrative Regulation 30.
- 3. If offsite sourced fill is to be placed onsite, then it must receive OES environmental approval when it exceeds 1,000 cubic yards for non-residential land use as per City Municipal Code Chapter 1031.
- 4. Commercial waste, including construction and demolition debris, generated during the demolition of existing site structures and/or the construction of new site structures as part of this development project must utilize a City franchised commercial waste collection service per Cincinnati Municipal Code Chapter 730. Current franchise holders include Rumpke of Ohio, Republic Services of Ohio, Best Way of Indiana, and Bavarian Trucking Company.

# **Recommendations:**

- 1. Due to the age of the existing site structures, asbestos, lead based paint, and other hazardous building materials should be surveyed and, if needed, abatement should be conducted following all applicable regulations prior to their demolition.
- 2. Solar over parking should be considered in the design as a renewable energy source.
- 3. Site parking should include electric vehicle charging stations.
- 4. Site parking should include bicycle racks.
- 5. The use of trees in the landscape design should be included to enhance urban forestry.
- 6. The use of pervious surfaces should be maximized to the extent practical in the design.

### Contact:

Howard Miller | OES | 513-352-6999 | howard.miller@cincinnati-oh.gov

# **Police Department**

Immediate Requirements to move the project forward:

• None currently.

# Requirements to obtain permits:

• No comments.

# **Recommendations:**

None

Contact:

- Katalin Howard | Police Dept. | 513-352-3298 | katalin.howard@cincinnati-oh.gov
- Brandon Kyle | Police Dept. | 513-564-1870 | brandon.kyle@cincinnati-oh.gov

# **Health Department**

# Immediate Requirements to move the project forward:

None

# Requirements to obtain permits:

1. No need for Health to review project as proposed.

# **Recommendations:**

None

Contact:



• Trisha Blake | Health Dept. | 513-352-2447 | trisha.blake@cincinnati-oh.gov

# Parks Department (Urban Forestry)

Immediate Requirements to move the project forward:

None

Requirements to obtain permits:

None

**Recommendations:** 

None

Contact:

Robin Hunt | Urban Forestry. | 513-861-9070 | robin.hunt@cincinnati-oh.gov

# Department of Transportation & Engineering (DOTE)

### Immediate Requirements to move the project forward:

None

### Requirements to obtain permits:

- 1. East side of Euclid Ave needs 10' R/W from the curb.
  - a. If there is going to be parking to the east of Euclid, then needs to be 15' of R/W. ( 5' tree lawn 10' walk)
- 2. Make sure to have free flow into the lot so traffic does not back up on Euclid into the Erkenbrecher intersection.
- 3. Drive access on Shields is too close to the Euclid intersection. Consider aligning with driveway on the south side of Shields.
- 4. Drop off/pull off area on east side of Euclid is too close to the driveway.
- 5. Remove any unused drive aprons and restore to City standards.
- 6. Use City standard drive apron for access.
- 7. All work in the right of way requires a DOTE permit.
- 8. Address to be assigned by DTEaddress@cincinnati-oh.gov prior to submitting for building permits.

# **Recommendations:**

None

Contact:

Morgan Kolks | DOTE | 513-335-7322 | morgan.kolks@cincinnati-oh.gov

# Buildings & Inspections – Buildings

Immediate Requirements to move the project forward:

• None

# Requirements to obtain permits:

**1.** No issues at this time per what is presented. A discussion regarding permitting is suggested.

# **Recommendations:**

None

Contact:

Robert Martin | B&I Plans Exam | 513-352-2456 | robert.martin@cincinnati-oh.gov



#### Department of Community & Economic Development (DCED)

Immediate Requirements to move the project forward:

None

Requirements to obtain permits:

None

**Recommendations:** 

None

Contact:

Joseph Malek | DCED | 513-352-6129 | joseph.malek@cincinnati-oh.gov

#### Law Department

#### Immediate Requirements to move the project forward:

The lease or sale of right of way requires:

- o Coordinated Report
- o Appraisal
- o City Planning Commission approval
- o City Council approval

The proposed aerial street crossing will require an easement. Easements require:

- o Coordinated report
- o Appraisal
- o City Planning commission approval
- o Council approval

Requirements to obtain permits:

None

**Recommendations:** 

None

Contact:

Charles Martinez | Law | 513-352-3359 | charles.martinez@cincinnati-oh.gov

FINAL ACTION: The CSR Advisory-TEAM and CSPRO Committee believes that the proposed project plans are moving in the appropriate direction and recommends that the project move forward to City Planning Commission subject to the following condition.

• The subject development must follow the requirements listed above to ensure that the development meets the requirements of all agencies as they apply for all permits.

Sincerely,

h 1ben

Art Dahlberg, Director of Buildings and Inspections Department & CSPRO Committee Chair AD:RDR:hs

Rodney D. Ringer,

Development Manager



### **Corryville Community Council, Inc.**

November 13th, 2020

To: Mr. Byron Stallworth, Chair, Cincinnati Planning Commission

RE: Corryville Community Council Support for Cincinnati Zoo Vine Street Parking Lot Re-configuration

Dear Mr. Stallworth,

The Corryville Community Council (CCC) submits this letter of support for the Cincinnati Zoo & Botanical Garden's (the Zoo) plans for their parking lot located on Vine Street between the Zoo and the VA building. Mark Fisher, VP of Facilities, Planning, & Sustainability presented their plans for the parking lot to the Board on November 10th.

The Zoo has been in contact with the CCC over the past few years to keep us updated on their plans for this existing parking lot and their former plans for erecting a parking garage on the site. We understand that they are in need of additional parking capacity; this residential portion of the Corryville neighborhood is located between the Zoo and VA and experiences daily street parking shortages associated with those two employers. This expanded parking lot will help to alleviate some of those concerns.

Additionally, we have been assured by Mr. Fisher that the zoo will continue to be proactive about its environmental responsibilities with the design of this parking lot, including on-site stormwater management, addressing the existing urban heat island through extensive tree and shrub plantings, on-site EV charging stations, and including solar as a dual shading/power creation strategy.

A significant concern to Corryville's residents and businesses is pedestrian and automobile safety along the Vine Street corridor. Mr. Fisher has also assured us that the access to the parking lot directly from Vine Street will be only for events and then only an exit and will be staffed with police to manage the traffic. He also has told us of the Zoo's intent to provide a pedestrian bridge across Erkenbrecher Ave. to minimize Vine St. crossings.

Finally, Mr. Fisher has indicated that the Zoo will commit to working with the City of Cincinnati and Corryville residents on Louis Avenue and Shields Street towards a neighborhood parking permit.

The Cincinnati Zoo & Botanical Garden has been a good neighbor to the residents of Corryville over its long history and with good neighbor actions like the ones highlighted above, we see that relationship continuing to thrive into the future. For the above reasons, the Board of the Corryville Community Council supports the aforementioned changes and uses. We do need to note, however, that due to the General Membership not meeting in December, as customary, this project will be presented to them at our January meeting.

Sincerely,

Jeak Hollstein

Leah Hollstein Secretary Corryville Community Council

#### Exhibit E



To: Byron Stallworth - Cincinnati Planning Commission

**RE: Avondale Community Council Letter of Support** 

Dear Brian,

On February 2<sup>nd</sup>, Mark Fisher of the Zoo presented to the board of trustees of the Avondale Community Council, their plans for future parking work and the associated rezone that would be required. The 3 areas being considered for rezone as well as a rendering of the expanded parking lot off of Erkenbrecher are attached.

Mark has presented to the Avondale Community Council multiple times over the past few years in regard to this particular area on Erkenbercher, and while the scope of work has shifted from a garage to an expanded surface lot, the case for the need has stayed consistent. Parking is a challenge for all in Uptown and we recognize and appreciate the zoo being transparent and collaborative in their efforts to find creative solutions, including a long history of shared parking with the VA.

Safety is of course a key area of focus for the residents of Avondale and we appreciate the concept of a pedestrian bridge across Erkenbrecher that is part of this plan. We also look forward to seeing the zoos continued investment in green energy and green stormwater management that will be associated with this project.

The Cincinnati Zoo has been a good neighbor this past decade and we agree with the outcomes associated with the attached plans and because of this, the board of trustees as voted unanimously to provide this letter of support for this rezone.

Sincerely,

Sandra M. Jones Mitchell

Sandra Jones-Mitchell President – Avondale Community Council



March 24, 2021

Subject:	Ordinance - Zone Changes for the Cincinnati Zoo and Botanical Garden	
Copies to:	James Weaver, AICP, Senior City Planner	
From:	Katherine Keough-Jurs, AICP, Director, Department of City Planning	fre
То:	Sheila Andrews, Office of the Clerk of Council	1

The above referenced ordinance is ready to be scheduled for Committee. We are requesting that this item be scheduled for the next available the Economic Growth & Zoning Committee. This item requires a public hearing and notice in the City Bulletin 14 days before the public hearing.

Included in this submission are the following items:

- 1) The transmittal letter to the Economic Growth & Zoning Committee;
- 2) A copy of the Planning Commission staff report dated March 19, 2021;
- 3) The Ordinance for the zone changes from RMX and SF-4 to PR;
- 4) The mailing labels for notification of all property owners within 400 feet; and
- 5) A copy of the mailing labels for your records

Cincinnati City Council Council Chambers, City Hall Cincinnati, Ohio 45202



Dear Members of Council:

We are transmitting herewith an Ordinance captioned as follows:

AMENDING the official zoning map of the City of Cincinnati to rezone certain real property commonly known as 3502-3526 Vine Street, 3429-3447 Vine Street, and 3412-3416 Marmet Avenue in the Avondale neighborhood, and certain additional real property generally located at the southeast corner of Vine Street and Erkenbrecher Avenue in the Corryville neighborhoods from the RMX, "Residential Mixed," and SF-4, "Single-Family," zoning districts to the PR, "Park and Recreation," zoning district to locate all of the Cincinnati Zoo and Botanical Garden properties within one consistent zoning district.

#### Summary:

The Cincinnati Zoo and Botanical Garden (CZBG) is currently almost entirely zoned Park and Recreation (PR). The requested changes in zoning are primarily a clean-up exercise as the property is already owned and maintained by the CZBG, which desires to have a consistent zoning district for their properties. A similar measure was done in 2015.

There are three requested zone changes:

- 1. The first is to rezone 2.575 acres along the east side of Vine Street between Tower Avenue and Beldare Avenue from Residential Mixed (RMX) to Park and Recreation (PR). This site contains the City Barn building, a community garden, and several open spaces that are planned to be turned into pocket parks for the neighborhood.
- 2. The second is to rezone 2.215 acres just north of the existing main parking lot entrance and pedestrian bridge over Vine Street from Residential Mixed (RMX) and Single-Family (SF-4) to Park and Recreation (PR). The eastern portion contains existing facilities and offices adjacent to the main zoo and will remain unchanged.
- 3. The third is to rezone 5.022 acres at the southeast corner of Vine Street and Erkenbrecher Avenue from Residential Mixed (RMX) to Park and Recreation (PR) to expand the parking lot from 433 spaces to over 700 spaces with solar panels, and for several homes owned by the CZBG which are to remain unchanged at this time.

The zone changes are consistent with both *Plan Cincinnati* (2012) and the *Avondale Quality of Life Plan* (2020) and the future development will be consistent with the existing surrounding built environment and adjacent zoning districts.

The Administration recommends Approval of this Ordinance.

Motion to Approve: Mr. Samad

Ayes:

Seconded: Ms. Sesler

Mr. Juech Mr. Smitherman Ms. McKinney Mr. Eby Mr. Stallworth Ms. Sesler Mr. Samad

THE CITY PLANNING COMMISSION

Thene Kengh-Jus

Katherine Keough-Jurs, AICP, Director Department of City Planning



801 Plum Street, Suite 346-A Cincinnati, Ohio 45202

Phone (513) 352-5205 Email Jan-Michele.Kearney@ cincinnati-oh.gov Web www.cincinnati-oh.gov

Jan-Michele Lemon Kearney Councilmember

#### MOTION

WHEREAS, it has been determined that the City of Cincinnati is lacking in an estimated 28,000 affordable housing units, and;

WHEREAS, the City of Cincinnati established an Affordable Housing Trust Fund in 2018 with \$700,000 from the proceeds from the sale of the Norfolk Railroad, and;

WHEREAS, the amount currently in the City's Affordable Housing Trust Fund is insufficient to meet the demand for affordable housing in the City of Cincinnati, and;

WHEREAS, the City of Cincinnati is to receive \$290 million from the American Rescue Plan, President Joe Biden's \$1.9 trillion coronavirus stimulus bill; Now, therefore:

WE MOVE that the City Administration prepare a REPORT on the feasibility of depositing a total of \$50 million from the American Rescue Plan into the City of Cincinnati's Affordable Housing Trust Fund immediately upon receipt of such funds.

#### **STATEMENT**

This motion is unrelated to the Affordable Housing Trust Fund Charter Amendment.

Jan-michele Lemon Kearney

Councilmember Jan-Michele Lemon Kearney



March 17, 2021 202101054

 To:
 Mayor and Members of City Council

 From:
 Paula Boggs Muething, City Manager

 Subject:
 Emergency Ordinance – Ohio Environmental Protection Agency Water Pollution Control Loan Fund Grant

 Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the City Manager to apply for, accept, and appropriate the sum of up to \$150,000 from the Ohio Environmental Protection Agency's Water Pollution Control Loan Fund for the purpose of providing financial assistance to Cincinnati homeowners with defective household sewage treatment systems; and AUTHORIZING the Director of Finance to deposit the grant funds into Public Health Research Fund 350.

This Emergency Ordinance would authorize the City Manager to apply for, accept and appropriate a grant in the amount up to \$150,000 from the Ohio Environmental Protection Agency's Water Pollution Control Loan Fund to help provide financial assistance to Cincinnati homeowners with defective household sewage treatment systems.

No new FTEs are associated with the grant, and the grant resources do not require matching local funds.

This Emergency Ordinance would also authorize the Finance Director to deposit the grant funds into Public Health Research Fund 350.

This Emergency Ordinance is in accordance with the Sustain goal to "Become a healthier Cincinnati" as described on page 181 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to provide funding to assist Cincinnati homeowners with expenses associated with defective household sewage treatment systems that can lead to public health issues.

The Administration recommends passage of this Emergency Ordinance.

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

Attachment



#### EMERGENCY

#### LES

- 2021

**AUTHORIZING** the City Manager to apply for, accept, and appropriate the sum of up to \$150,000 from the Ohio Environmental Protection Agency's Water Pollution Control Loan Fund for the purpose of providing financial assistance to Cincinnati homeowners with defective household sewage treatment systems; and AUTHORIZING the Director of Finance to deposit the grant funds into Public Health Research Fund 350.

WHEREAS, a grant is available from the Ohio Environmental Protection Agency's Water Pollution Control Loan Fund, and funding from the grant will assist Cincinnati homeowners with expenses associated with defective household sewage treatment systems; and

WHEREAS, no new FTEs are associated with the grant, and the grant resources do not require matching local funds; and

WHEREAS, the Cincinnati Health Department applied for the grant on February 26, 2021, but funding will not be accepted without authorization from City Council; and

WHEREAS, this ordinance is in accordance with the "Sustain" goal to "Become a healthier Cincinnati" as described on page 181 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is authorized to apply for, accept, and appropriate a grant

in an amount up to \$150,000 from the Ohio Environmental Protection Agency's Water Pollution

Control Loan Fund for the purpose of providing financial assistance to Cincinnati homeowners

with defective household sewage treatment systems.

Section 2. That Council hereby authorizes the Director of Finance to deposit the grant funds

into Public Health Research Fund 350.

Section 3. That the proper City officials are authorized to do all things necessary and proper

to comply with the terms of this grant and Sections 1 and 2 hereof.

Section 4. 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 provide funding to assist Cincinnati homeowners with expenses associated with defective household sewage treatment systems that can lead to public health issues.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest: \_\_\_\_\_

Clerk



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

March 17, 2021 202101066

**From:** Paula Boggs Muething, City Manager

#### Subject: Ordinance – Wasson Way Clean Ohio Trails Fund (COTF) Grant Application

Attached is an Ordinance captioned:

**AUTHORIZING** the City Manager to apply for grant resources from the Clean Ohio Trails Fund grant program to be awarded by the Ohio Department of Natural Resources in an amount up to \$500,000 for the purpose of providing resources for the construction of Phase 6a of the Wasson Way Trail project.

Approval of this Ordinance would authorize the City Manager to apply for grant resources in an amount up to \$500,000 from the Clean Ohio Trails Fund (COTF) through the Ohio Department of Natural Resources (ODNR), for the purpose of providing resources for the construction of Phase 6a of the Wasson Way Trail project, a shared use path for bicycles and pedestrians extending from near the intersection of Martin Luther King Jr. Drive and Reading Road in Avondale eastward through the City of Norwood, the Cincinnati neighborhoods of Evanston, Hyde Park, Oakley, and Mount Lookout, through the Village of Fairfax, and ending east of Wooster Road near its intersection with Red Bank Road in Columbia Township.

Local matching resources of approximately \$166,667 will be made available in future Department of Transportation & Engineering (DOTE) capital improvement program resources.

DOTE will have already applied for this grant due to the application deadline of March 15, 2021. However, DOTE will not accept grant funding without Council approval.

Construction of the Wasson Way Trail is in accordance with the "Connect" goal to "Develop an efficient multi-modal transportation system that supports neighborhood livability," as well as the strategies to "Expand options for non-automotive travel," and "Plan, design, and implement a safe and sustainable transportation system," as described on pages 129-138 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

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



Attachment

**AUTHORIZING** the City Manager to apply for grant resources from the Clean Ohio Trails Fund grant program to be awarded by the Ohio Department of Natural Resources in an amount up to \$500,000 for the purpose of providing resources for the construction of Phase 6a of the Wasson Way Trail project.

WHEREAS, the planned Wasson Way Trail is a shared-use path for bicycles and pedestrians extending from the intersection of Martin Luther King Jr. Drive and Reading Road in Avondale eastward through the City of Norwood, the Cincinnati neighborhoods of Evanston, Hyde Park, Oakley, and Mount Lookout, through the Village of Fairfax, and ending east of Wooster Road near its intersection with Red Bank Road in Columbia Township; and

WHEREAS, grant resources are available from the Ohio Department of Natural Resources through the Clean Ohio Trails Fund (COTF) grant program, in an amount up to \$500,000; and

WHEREAS, the COTF grant would provide resources for Phase 6a of the Wasson Way Trail project; and

WHEREAS, the Department of Transportation and Engineering (DOTE) has already applied for this grant as the application period ended on March 15, 2021; and

WHEREAS, DOTE will not accept grant funding without Council approval; and

WHEREAS, the grant requires local matching resources in the amount of approximately \$166,667, which will be made available in future DOTE capital budget resources; and

WHEREAS, no additional FTEs are necessary for this grant; and

WHEREAS, the construction of the Wasson Way Trail is in accordance with the "Connect" goal to "Develop an efficient multi-modal transportation system that supports neighborhood livability," as well as the strategies to "Expand options for non-automotive travel," and "Plan, design, and implement a safe and sustainable transportation system," as described on pages 129-138 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the City Manager is authorized to apply for a grant from the Ohio

Department of Natural Resources in an amount up to \$500,000 for the purpose of providing

resources for the construction of Phase 6a of the Wasson Way Trail project.

Section 2. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of the grant application program and Section 1 hereof.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

\_

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest: \_\_\_\_\_ Clerk



March 17, 2021

#### TO: Mayor and Members of City Council

FROM: Paula Boggs Muething, City Manager 202101067

#### **EMERGENCY ORDINANCE—Special Assessment for City Urban Forest** SUBJECT: **Maintenance District**

The Urban Forestry assessment must be enacted by City Council every year to assure funding for street tree maintenance and planting. An ordinance must be approved by City Council to proceed with the street tree program in accordance with the resolution of necessity previously passed by City Council.

Attached hereto, is an emergency ordinance captioned:

**DETERMINING** to proceed with a special assessment for the Urban Forestry Program for the calendar year 2022, for the control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees in the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

January 21, 2021, the Council of the City of Cincinnati passed Resolution 5-2021 pursuant to Ohio Revised Code (O.R.C.) declaring the necessity of assessing \$0.21 per front foot for the control of blight and disease of shade trees within the public right-of-way. No objections were filed to the special assessment pursuant to O.R.C. Section 727.15.

This transmittal is the second step of a three-step process to establish the special urban forestry assessment for the City of Cincinnati for 2022.

The Administration recommends the adoption of this emergency ordinance.

Cc: Kara Kish, Director of Parks R. Hunt, C. Sherman

Attachment I – Emergency Ordinance

### EMERGENCY City of Cincinnati An Ordinance No.\_\_\_\_

KKF BUL

- 2021

**DETERMINING** to proceed with a special assessment for the Urban Forestry Program for the calendar year 2022, for the control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees in the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

WHEREAS, on January 21, 2021, Council passed Resolution No. 5-2021 pursuant to Ohio Revised Code ("O.R.C.") Section 727.12, declaring the necessity of continuing the Urban Forestry Program for the control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees in the public right-of-way in the City's Urban Forestry Maintenance District, for the calendar year 2022; and

WHEREAS, under Resolution 5-2021, Council also authorized the assessment of properties within the Urban Forestry Maintenance District at the rate of \$0.21 per front foot, and the estimated assessments were prepared and placed on file in the Office of the Clerk of Council; and

WHEREAS, no objections were filed to the special assessment pursuant to O.R.C. Section 727.15; now, therefore,

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

Section 1. That the Council of the City of Cincinnati is determined to proceed with the Urban Forestry Program for the control of blight and disease of shade trees within the public right-of-way and for planting, maintaining, trimming, and removing shade trees along the streets of the City of Cincinnati's Urban Forestry Maintenance District for the year 2022 as set out and approved in accordance with the provisions of Resolution No. 5-2021.

Section 2. That the estimated assessments, as prepared and filed in the Office of the Clerk of Council, are hereby approved and adopted.

Section 3. That no claim for damages has been filed pursuant to O.R.C. Section 727.18.

Section 4. 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 determine the need to proceed with the assessment before Council passes the levying ordinance required by statute.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest: \_\_\_\_\_

Clerk



March 17, 2021 202101068

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

**From:** Paula Boggs Muething, City Manager

#### Subject: Emergency Ordinance – Donation for Ezzard Charles Statue Plaza

Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the City Manager to accept and deposit a donation in an amount of \$100,000 from the Cincinnati Parks Foundation into Fund No. 430, "Parks Private Endowment," for the purpose of providing resources for the design and construction of the accessible plaza for the Ezzard Charles statue in Laurel Park; ESTABLISHING new capital improvement program project account no. 980x203x212009, "Ezzard Charles Statue Plaza," for the purpose of providing resources for the design and construction of the accessible plaza for the Ezzard Charles statue in Laurel Park; and further AUTHORIZING the transfer and appropriation of \$100,000 from the unappropriated surplus of Fund No. 430, "Parks Private Endowment," to newly established capital improvement program project account no. 980x203x212009, "Ezzard Charles Statue Plaza."

This Emergency Ordinance authorizes the establishment of new capital improvement program project account no. 980x203x212009, "Ezzard Charles Statue Plaza." The Emergency Ordinance authorizes the City Manager to accept and deposit a donation of \$100,000 from the Cincinnati Parks Foundation to Fund 430, "Parks Private Endowment," to provide resources for the design and construction of the accessible plaza for the Ezzard Charles statue in Laurel Park. The Emergency Ordinance also authorizes the transfer and appropriation of \$100,000 from the unappropriated surplus of Fund 430, "Parks Private account no. 980x203x212009, "Ezzard Charles Statue Plaza."

Design and construction of the accessible plaza for the Ezzard Charles statue is in accordance with the "Live" goal to "build a robust public life" and strategy to "develop and maintain inviting and engaging public spaces that encourage social interaction between different types of people" as described on pages 147 - 152 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to accept this donation within the timeframe necessary for construction to begin.

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



Attachment



AUTHORIZING the City Manager to accept and deposit a donation in an amount of \$100,000 from the Cincinnati Parks Foundation into Fund No. 430, "Parks Private Endowment," for the purpose of providing resources for the design and construction of the accessible plaza for the Ezzard Charles statue in Laurel Park; ESTABLISHING new capital improvement program project account no. 980x203x212009, "Ezzard Charles Statue Plaza," for the purpose of providing resources for the design and construction of the accessible plaza for the Ezzard Charles statue in Laurel Park; and construction of the accessible plaza for the Ezzard Charles statue in Laurel Park; and further AUTHORIZING the transfer and appropriation of \$100,000 from the unappropriated surplus of Fund No. 430, "Parks Private Endowment," to newly established capital improvement program project account no. 980x203x212009, "Ezzard Charles Statue Plaza."

WHEREAS, the Cincinnati Park Board is installing a statute of Ezzard Charles in Laurel Park in order to commemorate the long-time West End resident, who was an entrepreneur, renowned jazz enthusiast, and a brilliant Renaissance man, and most famously boxing's Heavyweight Champion of the World; and

WHEREAS, acceptance of the funds from a generous donation by the Cincinnati Parks Foundation will reimburse the City's costs for designing and constructing the accessible plaza for the Ezzard Charles statute in Laurel Park; and

WHEREAS, there is no match requirement associated with the acceptance of this donation; and

WHEREAS, there are no new FTEs associated with the acceptance of this donation; and

WHEREAS, this ordinance is in accordance with the "Live" goal to "Build a robust public life" and strategy to "Develop and maintain inviting and engaging public spaces that encourage social interaction between different types of people," as described on pages 147 - 152 of Plan Cincinnati (2012); 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 accept and deposit a donation in

an amount up to \$100,000 from the Cincinnati Parks Foundation to Fund No. 430, "Parks Private

Endowment," for the purpose of providing resources for the design and construction of the

accessible plaza for the Ezzard Charles statue in Laurel Park.

Section 2. That new capital improvement program project account no. 980x203x212009, "Ezzard Charles Statue Plaza," is hereby established for the purpose of providing resources for the design and construction of the accessible plaza for the Ezzard Charles statue in Laurel Park.

Section 3. That the City Manager is hereby authorized to transfer and appropriate up to \$100,000 from the unappropriated surplus of Fund No. 430, "Parks Private Endowment," to newly established capital improvement program project account no. 980x203x212009, "Ezzard Charles Statue Plaza," for the purpose of providing resources for the design and construction of the accessible plaza for the Ezzard Charles statue in Laurel Park.

Section 4. That the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Section 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 accept this donation within the timeframe necessary for construction to begin.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest:

Clerk



March 17, 2021

TO: Mayor and Members of City Council

FROM: Paula Boggs Muething, City Manager

202101069

SUBJECT: EMERGENCY ORDINANCE—Special Assessment for Shade Tree Program

The Urban Forestry assessment must be enacted by City Council every year to assure funding for street tree maintenance and planting. An ordinance must be approved by City Council to proceed with the street tree program in accordance with the resolution of necessity previously passed by City Council.

Attached is an emergency ordinance captioned:

**LEVYING** a special assessment for the Urban Forestry Program for the calendar year 2022, for control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees within the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

January 21, 2021, the Council of the City of Cincinnati passed Resolution 5-2021 pursuant to Ohio Revised Code (O.R.C.) Section 727.12 declaring the necessity of assessing \$0.21 per front foot for the control of blight and disease of shade trees within the public right-of-way. This emergency ordinance is the third and final step in the process to establish the special urban forestry assessment for the City of Cincinnati for 2022.

The Administration recommends the adoption of this emergency ordinance.

Cc: Kara Kish, Director of Parks ' R. Hunt, C. Sherman

Attachment I – Emergency Ordinance

## City of Cincinnati An Ordinance No.\_\_\_\_

KKF BWG - 2021

**LEVYING** a special assessment for the Urban Forestry Program for the calendar year 2022, for control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees within the public right-of-way in the City of Cincinnati's Urban Forestry Maintenance District.

WHEREAS, on January 1, 2021, Council passed Resolution No. 5-2021 pursuant to Ohio Revised Code Section 727.12, declaring the necessity of continuing the Urban Forestry Program for the control of blight and disease of shade trees and for planting, maintaining, trimming, and removing shade trees in the public right-of-way in the City's Urban Forestry Maintenance District, for the calendar year 2022; and

WHEREAS, under Resolution 5-2021, Council also authorized the assessment of properties within the Urban Forestry Maintenance District at the rate of \$0.21 per front foot, and the estimated assessments were prepared and placed on file in the Office of the Clerk of Council; and

WHEREAS, notice of the passage of the resolution was published in a newspaper of general circulation as required by law, and notice by certified mail has been completed to the property owners for whom the assessment amount exceeds \$249.00; and

WHEREAS, there are no outstanding objections to the estimated assessments; and

WHEREAS, on \_\_\_\_\_, 2021, Council passed Ordinance No. \_\_\_\_-2021 determining to proceed with the special assessment; and

WHEREAS, Council has determined that the actual cost of the Urban Forestry Program does not exceed the estimated cost for the Program for the year 2022; now, therefore,

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

Section 1. That there is hereby levied, in accordance with Ohio Revised Code Chapter 727, an assessment of \$0.21 per front foot upon the property abutting the public right-of-way and streets within the Urban Forestry Maintenance District, which includes all territory within, and coextensive with, the City's boundaries, for the portion of the cost and expense of said shade tree program for the Urban Forestry Maintenance District for the year 2022.

Section 2. That it is hereby determined that said assessments do not exceed the special benefits resulting from said Urban Forestry Program and do not exceed any statutory limitations.

Section 3. That the special assessment against each lot and parcel of land shall be payable in one annual installment to the Treasurer of Hamilton County, Ohio at the same time and in the same manner as real property taxes, due and payable in December 2021, are paid.

Section 4. That the City Treasurer and the Clerk of Council are hereby directed to certify said assessments to the Auditor of Hamilton County, Ohio to be placed by the Auditor on the Tax List and collected in the same manner as real property taxes are collected for December 2021, as provided by law.

Section 5. That said assessments, when collected, shall be placed into a fund for the purpose of paying the cost and expense of said Urban Forestry Program and shall be paid out upon proper vouchers in payment of such cost and expense.

Section 6. That the following costs shall be paid out of a fund provided to pay the City's portion of the cost and expense of said shade tree program: the cost of street intersections, any uncollectible assessments on property owned by the federal government or the State of Ohio, assessments on property owned by the City of Cincinnati, and any portion of the cost not specifically assessed.

Section 7. That the Clerk of Council is hereby directed to cause notice of this ordinance to be published once in a newspaper of general circulation within the City of Cincinnati.

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Section 8. That this ordinance shall take effect and be in force from and after the earliest time allowed by law.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest: \_\_\_\_\_ Clerk



801 Plum Street, Suite 346 A Cincinnati, Ohio 45202

Phone (513) 352 5205 Email Jan Michele.Kearney@ cincinnati.oh.gov Web www.cincinnati.oh.gov

Jan-Michele Lemon Kearney

#### **MOTION**

WE MOVE for the administration to compare the Balanced Development Priorities Analysis to the Peaslee Neighborhood's Developer Questionnaire. Include in the report any information requested from developers by Peaslee's Developer Questionnaire that is not gathered by the Department of Community and Economic Development that City Council will not be provided in response to the Balanced Development Priorities Analysis and information requested by the Department of Community and Economic Development.

Jan-Michele Lemon Kearney

Councilmember Jan-Michele Lemon Kearney



March 17, 2021 202101077

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

**From:** Paula Boggs Muething, City Manager

#### Subject: Emergency Ordinance – ODNR REALM Grant

Attached is an Emergency Ordinance captioned:

**ESTABLISHING** new capital improvement program project no. 980x199x211923, "Nature Playscape – Bramble Park"; and further AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$75,000 from the State of Ohio, Department of Natural Resources, Office of Real Estate & Land Management for the purpose of funding the design and construction of a new nature playscape at the Bramble Recreation Area, located at 6395 Bramble Avenue.

This Emergency Ordinance authorizes the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$75,000 from the State of Ohio, Ohio Department of Natural Resources (ODNR) Office of Real Estate & Land Management (REALM) for the purpose of funding the design and construction of a new Nature Playscape at the Bramble Recreation Area located at 6395 Bramble Avenue. In addition, this Emergency Ordinance also authorizes the Finance Director to establish new capital improvement program project account no. 980x195x211923, "Nature Playscape - Bramble Park," for the purpose of providing grant resources for the engineering, design, and construction of the Nature Playscape.

ODNR is a federally funded reimbursement grant program that provides 100% of project funding. The project was submitted at a projected total project cost of \$330,000 and may be approached in a phased concept. The Cincinnati Recreation Commission (CRC) will enlist the help of community partners (Groundworks, Cincinnati Parks Department) to complete as much of the project as possible given the initial amount received. The CRC will provide engineering and design services, labor contributed by department staff and enlist community volunteers to leverage all available resources for project completion.

The grant requires no local match, and no new FTE are associated with the grant. Recreation has applied for the grant but will not accept any resources without City Council approval. This Emergency Ordinance is in accordance with the "Live" goal to "Create a more livable community," as described on page 156 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to assure timely acceptance of grant funds.

The Administration recommends passage of this Emergency Ordinance.

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

Attachment





### EMERGENCY City of Cincinnati An Ordinance No.\_\_

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**ESTABLISHING** new capital improvement program project no. 980x199x211923, "Nature Playscape – Bramble Park"; and further AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$75,000 from the State of Ohio, Department of Natural Resources, Office of Real Estate & Land Management for the purpose of funding the design and construction of a new nature playscape at the Bramble Recreation Area, located at 6395 Bramble Avenue.

WHEREAS, the Ohio Department of Natural Resources administers a federally funded reimbursement grant program that provides 100% of project funding; and

WHEREAS, the Cincinnati Recreation Commission ("CRC") plans to design and construct a new nature playscape at the Bramble Recreation Area ("the playscape"); and

WHEREAS, the playscape has a projected total cost of \$330,000 and may be completed in a phased concept; and

WHEREAS, the CRC will provide engineering and design services, donate staff labor, and enlist the help of community partners to leverage all available resources for the playscape's completion; and

WHEREAS, the CRC has already applied for the grant, but will not accept any funds without approval of Council; and

WHEREAS, there are no match requirements or new FTEs associated with the acceptance of this grant; and

WHEREAS, capital improvements to CRC facilities are in accordance with the "Live" goal to "create a more livable community" as described on page 156 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the Finance Director is hereby authorized to establish new capital

improvement program project account no. 980x199x211923, "Nature Playscape - Bramble Park,"

for the purpose of funding the design and construction of a new nature playscape at the Bramble

Recreation Area, located at 6395 Bramble Avenue.

Section 2. That the City Manager is hereby authorized to apply for, accept, and appropriate an amount of up to \$75,000 from the State of Ohio, Department of Natural Resources, Office of Real Estate & Land Management into the newly established capital improvement program project account no. 980x199x211923, "Nature Playscape – Bramble Park."

Section 3. That the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Sections 1 and 2 hereof.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of 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 assure timely acceptance of grant funds.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest:

Clerk



March 17, 2021 202101078

 To:
 Mayor and Members of City Council

 From:
 Paula Boggs Muething, City Manager

 Subject:
 Emergency Ordinance – Ohio School Threat Assessment Training Grant

Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the City Manager apply for, accept, and appropriate a grant in the amount of up to \$68,000 from the Ohio Attorney General; and AUTHORIZING the appropriation of the sum of \$60,000 to Police's General Fund personnel operating budget account no. 050X228X7100, and \$8,000 to Cincinnati Police Department General Fund non personnel operating budget account no. 050X228X7200, for the purpose of funding threat assessment training for school resource officers and conducting school building vulnerability assessments.

This Emergency Ordinance would authorize the City Manager to apply for, accept, and appropriate a grant for up to the amount of \$68,000 from the Ohio Attorney General for School Resource Officers to complete Threat Assessment Training and conduct school building vulnerability assessments.

The Ohio Attorney General's Office, in consultation with the Ohio Department of Education, have made grants available to provide supplies and equipment for School Safety, in addition to training and educational resources related to safety. Grant funding is available to Police Agencies whose School Resource Officers work with their local school districts to conduct school building vulnerability assessments to provide the school with a 360-degree picture of potential security gaps which helps the school identify the type of supplies, equipment or resources they need. All School Resource Officers must complete an 11-module Ohio School Threat Assessment Training prior to conducting any school vulnerability assessed.

There are no new FTE or matching funds required with this grant. This Emergency Ordinance will also authorize the Finance Director to deposit the grant funds into General Fund revenue account no. 050x228x5321x8533.

This Emergency Ordinance is in accordance with the "Live" goal to "Support and Stabilize our neighborhoods" as described on page 156 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to conduct the school building vulnerability assessments.

The Administration recommends passage of this Emergency Ordinance.

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

Attachment



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### EMERGENCY City of Cincinnati An Ordinance No.\_\_\_

AEP BUG

- 2021

**AUTHORIZING** the City Manager apply for, accept, and appropriate a grant in the amount of up to \$68,000 from the Ohio Attorney General; and AUTHORIZING the appropriation of the sum of \$60,000 to Police's General Fund personnel operating budget account no. 050X228X7100, and \$8,000 to Cincinnati Police Department General Fund non personnel operating budget account no. 050X228X7200, for the purpose of funding threat assessment training for school resource officers and conducting school building vulnerability assessments.

WHEREAS, the Ohio Attorney General's Office, in consultation with the Ohio Department of Education, has made grants available to provide supplies and equipment for school safety, including training and educational resources; and

WHEREAS, the grant funding is available to support police agencies whose school resource officers work with their local school districts to conduct school building vulnerability assessments to provide the school with a 360-degree picture of potential security gaps and identify any needed supplies, equipment, or resources; and

WHEREAS, acceptance of the grant funding requires the school resource officers to complete an 11-module Ohio School Threat Assessment Training prior to conducting any school vulnerability assessments; and

WHEREAS, Cincinnati school resource officers already have received training under this program, but grant funds will not be accepted unless this ordinance is approved by Council; and

WHEREAS, the grant does not require matching funds, and there are no new FTEs associated with the grant; and

WHEREAS, funding threat assessment training for school resource officers and conducting school building vulnerability assessments is in accordance with the "Live" goal to "Support and Stabilize our neighborhoods," as described on page 164 of Plan Cincinnati (2012); 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 apply for, accept, and appropriate

a grant in the amount of up to \$68,000 from the Ohio Attorney General for the purpose of funding

threat assessment training for school resource officers and conducting school building

vulnerability assessments.

Section 2. That the Director of Finance is hereby authorized to deposit the grant funds into General Fund revenue account no. 050x8533.

Section 3. That the appropriation of the sum of \$60,000 to Cincinnati Police Department General Fund personnel operating budget account no. 050X228X7100 and \$8,000 to Police's General Fund operating budget account no. 050X228X7200 is hereby authorized for the purpose of funding school threat assessments and training.

Section 4. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 3 hereof.

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 conduct the school building vulnerability assessments.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest: \_\_\_\_\_

Clerk



801 Plum Street, Suite 346A Cincinnati, Ohio 45202

Phone (513) 352-5280 Email liz.keating@cincinnati-oh.gov Web www.cincinnati-oh.gov

Liz Keating Councilmember

March 15, 2021

#### Motion

Our small businesses have suffered from the negative impacts of COVID-19 at a disproportionate level. The City of Cincinnati is to receive \$290 million from the American Rescue Plan, President Joe Biden's \$1.9 trillion coronavirus stimulus bill. **We MOVE** that the City Administration prepare a REPORT on how much money, of the \$290 million from the American Rescue Plan, that the city could feasibly set aside to aid the small business community in their COVID-19 recovery efforts. This approach needs to be a two-pronged effort that not only targets specific small businesses but also takes a blanketed approach to focus on providing aid to neighborhood business districts. Therefore, **we further MOVE** that the City Administration prepare a REPORT on how much money of \$290 million from the American Rescue Plan, that the city could feasibly set aside to identify and aid the neighborhood business districts that have been most negatively impacted by the COVID-19 impact. **We further MOVE** that the City Administration prepare a REPORT on the eligibility requirements in which small businesses and neighborhood business districts would need to meet in order to qualify for relief through the city. These funds would be utilized to assist in the recovery from the losses our small businesses and communities have endured due to the COVID-19 Pandemic. We request these reports within 21 days to allocate enough time to consider these findings for the upcoming budget process.



801 Plum Street, Suite 346A Cincinnati, Ohio 45202

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Liz Keating Councilmember

#### Statement

Last week President Joe Biden released the American Rescue Plan, a \$1.9 trillion coronavirus stimulus bill. The City of Cincinnati received \$290 million dollars from this Rescue Plan. The City is receiving this money to combat the impacts that COVID-19 has had on our community as a whole.

The small business community of Cincinnati and neighborhood business districts across the city have experienced incredible loss due to the pandemic; some small businesses have had to close their doors for months at a time and many have taken massive hits to their revenue stream. When these small businesses suffer, the neighborhood business districts they reside in also suffer. Many businesses have not recovered from the impact of COVID-19, and others risk not recovering at all. These small businesses are pillars to our neighborhoods and our city as a whole.

The bill passed by President Joe Biden allocated the \$290 million dollars to the City of Cincinnati to assist with COVID-19 recovery. It is imperative that we utilize a portion of these funds to assist the small businesses and neighborhood business districts across the city that have faced economic hardships due to the pandemic. We will only recover if they do.

Councilmember Liz Keating



City Hall, Room 346B 801 Plum Street Cincinnati, Ohio 45202 Phone (513) 352-3640 Email Betsy.Sundermann@cincinnati-oh.gov

### Betsy Sundermann

Cincinnati City Councilmember

March 16, 2021

#### MOTION

**WE MOVE** the Administration draft an ordinance to provide \$3,000,000 for the final gap in funding needed for the Warsaw Avenue Creative Campus in East Price Hill being developed by Price Hill Will, the premier nonprofit community development corporation serving the neighborhoods of East, West, and Lower Price Hill. The source of city revenue should be a portion of the anticipated \$291,590,000 that Cincinnati is anticipated to receive from the recently passed federal law, American Rescue Plan.

Betsy Sund Betsy Sunde	dormann ermann
Jan-Michele Kearney	David Mann

#### **STATEMENT**

Once complete, the Warsaw Avenue Creative Campus (WACC) will become a vibrant place where youth and families can learn and grow together via arts and creative pursuits in the heart of East Price Hill. The plan for the Campus includes the large city block bounded by Warsaw, Purcell, Price, and Hawthorne Avenues. These gateway blocks are the first block of the historic Warsaw Neighborhood Business District one sees coming up the hill from downtown.

The community has prioritized the development of the Campus as a way to connect the momentum in the Incline District and Price Avenue, including ARCO - Price Hill Will's recent \$10 million renovation of the former Price Hill Masonic Lodge into a center for arts and community - with the Warsaw corridor. The Campus also contains the soon-to-reopen Price Hill Library, undergoing a \$6 million renovation and expansion; the Price Hill Recreation Center; and Dempsey Park and Pool. (see map)

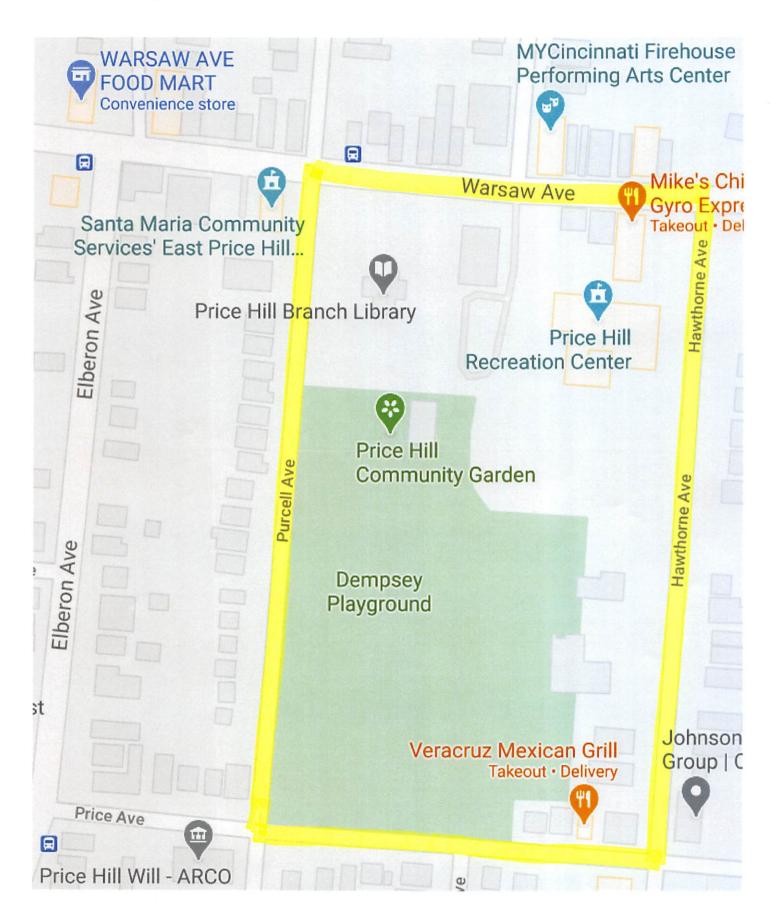
The mixed-use Campus buildings will feature renovated first floor commercial spaces for familycentered activities and resident-serving retail and upper floor market-affordable apartments. Price Hill Will (PHW) and East Price Hill Improvement Association (EPHIA) partnered to have the 3100 and 3200 blocks of Warsaw Avenue listed on both a local historic district and on the National Register of Historic Places so that historic tax credits can be accessed.

As PHW and the Model Group are finalizing funding for the heart of the Campus, the goal is to eventually expand the project to include buildings owned by The Port, which has invested over \$400,000 in historic stabilization on four buildings along Warsaw that were home to significant criminal activity and/or which were severely dilapidated. Now that The Port has saved these buildings, PWH would like to complete the renovations to create more apartments and commercial spaces.

In all, the expanded Campus will include 31 apartments and over 17,000 square feet of commercial space. An investment of \$3 million in City funds will help leverage the \$12 million in funds already raised by PHW and Model Group and allow the inclusion of additional buildings, reduce rents in commercial spaces to encourage locally owned retail, and create additional off-street parking to support redevelopment along Warsaw. PHW will own and manage the WACC buildings long-term.

### Map of the Warsaw Avenue Creative Campus

Bounded by Warsaw Avenue – Purcell Avenue – Price Avenue – Hawthorne Avenue



Calendar Dim





801 Plum Street, Suite 354 Cincinnati, Ohio 45202

Phone (513) 352-5243 Email steven.goodin@cincinnati-oh.gov Web www.cincinnati-oh.gov

Steven P. Goodin Councilmember

March 15, 2021

#### MOTION

During the COVID-19 pandemic, Cincinnati workers have adopted remote working at an amazing pace. Many routine office activities have been replaced by video conferencing and digital access to documents. While these innovations have kept our economy moving, they also present a looming crisis for Ohio's cities. More than 70 percent of Cincinnati's revenue is derived from its earnings tax, and a significant portion of that percentage is derived from non-City residents who formerly worked in downtown offices. Recent litigation and potential legislation have called into question our ability to tax those workers in the long term. These actions notwithstanding, many businesses may simply choose to close their offices or reduce their physical footprint in the City, thus shrinking the tax base over time. Accordingly, **WE MOVE** that the Administration prepare a report outlining the loss in revenue to the City per annum if, variably, 10, 20 or 30 percent of non-resident City workers would no longer be subject to the City's earnings tax.

Councilmember Steven Goodin xindernan



20210 1182-Date: March 17, 2021

To:Councilmember David MannFrom:Andrew W. Garth, City SolicitorSubject:Emergency Ordiannce – Honorary Street Naming Pat Barry Way

Transmitted herewith is an emergency ordinance captioned as follows:

**DECLARING** that Hatch Street between Louden Street and Wareham Street in the Mt. Adams neighborhood shall hereby receive the honorary, secondary name of Pat Barry Way in honor of Pat Barry and in recognition of his contributions and dedication to the City of Cincinnati.

AWG/JRS/(lnk) Attachment 334174

### EMERGENCY City of Cincinnati An Ordinance No.\_\_\_\_\_

JRS MJG

- 2021

**DECLARING** that Hatch Street between Louden Street and Wareham Street in the Mt. Adams neighborhood shall hereby receive the honorary, secondary name of Pat Barry Way in honor of Pat Barry and in recognition of his contributions and dedication to the City of Cincinnati.

WHEREAS, Pat Barry was a longtime local radio and television personality who for decades was a reliable source of news and weather for Cincinnatians; and

WHEREAS, Mr. Barry started in radio at the age of 16 while still in high school; and

WHEREAS, in 1974, Mr. Barry came to Cincinnati where he worked in radio and television for the next forty years; and

WHEREAS, after radio, Mr. Barry was the first weather anchor for FOX19 and later the chief weather personality for WLWL News 5; and

WHEREAS, during his many years in Cincinnati, Mr. Barry worked on a variety of television and radio programs in Cincinnati, including for stations, WKRQ-FM, WLWT-TV, WXIX-TV, Fox Sports Ohio, WLW-AM, WKRC-AM, WMOJ-FM, WSAI-AM, WDJO-FM, WNKR-FM/WNKN-FM and Hamilton's old WOKV-FM; and

WHEREAS, throughout his career, Mr. Barry was known for his big heart, good humor, and concern for others, and these qualities made him a favorite of viewers and helped lift his news team to the top of the local ratings; and

WHEREAS, Mr. Barry's contributions and dedication to the City of Cincinnati and its citizens will long be remembered; now, therefore,

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

Section 1. That Hatch Street between Louden Street and Wareham Street in the Mt. Adams

neighborhood shall hereby receive the honorary, secondary name of Pat Barry Way in honor of

Pat Barry and in recognition of his contributions and dedication to the City of Cincinnati.

Section 2. That the appropriate City officials are hereby authorized to do all things

necessary and proper to implement the provisions of Section 1 herein, including the generation

and installation of appropriate secondary street signage, which shall designate Hatch Street between Louden Street and Wareham Street as Pat Barry Way in accordance with the Department of Transportation and Engineering's procedures relating to street designation and related signage.

Section 3. That a copy of this ordinance be sent to Mr. Barry's family via the office of Councilmember David Mann.

Section 4. 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 Department of Transportation and Engineering to move forward with the administrative requirements needed to construct and implement the secondary signage at the designated location.

Passed: \_\_\_\_\_, 2021

John Cranley, Mayor

Attest:

Clerk



801 Plum Street, Suite 354 Cincinnati, Ohio 45202

Phone (513) 352-5243 Email steven.goodin@cincinnati-oh.gov Web www.cincinnati-oh.gov

02101145

Steven P. Goodin Councilmember

March 16, 2021

#### MOTION

New 5G mobile communications technology has necessitated the deployment of thousands of small cell system towers throughout the United States. Such towers are now being deployed in Cincinnati neighborhoods. Accordingly, **WE MOVE** that the Administration advise Council regarding all potential methods of regulating 5G small cell system towers under the City's Municipal Code, Administrative Code and Zoning Code.

Councilmembe	r Steven Goodin
Betsy Sundarmann	Jani ale La Kearn Anna Auto