

# RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc.

Resolution No. 13-2020

Passed May 26,, 2020

*A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COMMUNITY RESIDENTIAL REHABILITATION LOAN PROGRAM AGREEMENT AND OPEN-END MORTGAGE WITH THE MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION (MONTGOMERY COUNTY LAND BANK) FOR THE RENOVATION OF 323 EAST CENTRAL AVENUE.*

*WHEREAS, the City of West Carrollton, Ohio (the City) owns the residential property located at 323 East Central Avenue; and*

*WHEREAS, the City intends to accomplish a quality renovation of the 323 East Central Avenue property in order to provide quality housing options within the community and establish and preserve high value home sale prices; and*

*WHEREAS, the City intends to utilize 0% interest housing redevelopment funds available through the Montgomery Land Bank for the rehabilitation of the 323 East Central Avenue property; and*

*WHEREAS, the redevelopment of 323 East Central Avenue property is consistent with the West Carrollton City Council's 2020 Top Ten List, Item 7., Housing Revitalization Effort.*

*NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, OHIO THAT:*

SECTION 1: The City Manager is hereby authorized to enter into a Community Residential Rehabilitation Loan Program Agreement and Open-End Mortgage with the Montgomery County Land Bank.

SECTION 2: That this Resolution shall take effect from and after the date of its passage, the earliest period allowed by law.

Passed: 5/26/2020

Attest: Tom Reilly  
Clerk of Council

[Signature]  
Mayor

## OPEN-END MORTGAGE

THIS OPEN-END MORTGAGE ("Mortgage") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by The City of West Carrollton ("Mortgagor"), to MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION, an Ohio corporation for non-profit ("Mortgagee"), under the following circumstances:

A. Pursuant to that Montgomery County Land Reutilization Corporation Community Residential Rehab Loan Program Agreement dated the same date as this Mortgage (the "Loan Agreement"), Mortgagor has executed and delivered to Mortgagee a Promissory Note in the principal amount of Fifty Thousand Dollars ( \$50,000.00 ) dated the same date as this Mortgage, which Promissory Note evidences a loan (the "Loan") from Mortgagee to Mortgagor. The Promissory Note, together with any renewals, extensions or modifications, and all notes issued in substitution or replacement are collectively referred to as the "Note."

B. The Note, this Mortgage, the Loan Agreement and any other agreements and documents, which may include, without limitation, other documents, certificates and affidavits executed in connection with the Note are collectively referred to in this Mortgage as "Loan Documents."

## ARTICLE 1 The Grant

NOW THEREFORE, in consideration of the making of the Loan, Mortgagor agrees that this Mortgage shall secure the prompt payment of the indebtedness evidenced by the Note and the payment, performance and observance by Mortgagor of all of the terms, covenants and conditions contained in the Note, this Mortgage and all other Loan Documents, together with any amendments, modifications, renewals, extensions and restatements of the Loan Documents, and all expenses and fees incurred or other sums disbursed by Mortgagee under this Mortgage, the other Loan Documents or any other document, instrument or agreement related to any of the foregoing. The foregoing secured obligations are collectively referred to as the "Indebtedness." In order to charge the properties, interests and rights described in this Mortgage with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which are acknowledged, Mortgagor mortgages, warrants, grants, bargains, sells, assigns, encumbers, conveys and grants a security interest to Mortgagee, its successors and assigns forever, in all of the estate, title, and interest of Mortgagor in the fee simple, leasehold

and easement estates in that certain real property situated in Montgomery County, Ohio and more particularly described on Exhibit A attached to this Mortgage (the "Real Property").

TOGETHER WITH, all present and future structures, access rights, rights-of-way or use, servitudes, licenses, and improvements on the Real Property, all of the rights, privileges, licenses, easements and appurtenances belonging to such Real Property, together with all of the estates and rights in and to lands lying in streets, alleys and roads adjoining the Real Property (collectively the "Improvements"), all proceeds or sums payable in lieu of or as compensation for the loss or damage to Improvements or to the Real Property, and all rights in and to all property damage and other insurance policies maintained by Mortgagor on the Improvements and Real Property, all plans, specifications, drawings, studies, surveys, appraisals and other similar work product, all contracts for design, architectural, engineering or construction services and all rights and claims under such contracts; all other contract rights and agreements for the protection of property or services to or in connection with, or otherwise benefiting the Real Property, including without limitation, all permits, licenses, variances, approvals and/or consents issued by any governmental entity, utility or other entity, all of the foregoing, which together with the Real Property and Improvements are referred to as the "Premises."

TO HAVE AND TO HOLD, the Premises unto the Mortgagee, its successors and assigns forever, for the use and purposes stated in this Mortgage.

## **ARTICLE 2**

### **Representations and Warranties**

In order to induce Mortgagee to make the Loan, Mortgagor covenants, represents and warrants to Mortgagee that, effective as of the time of execution and delivery of this Mortgage (a) Mortgagor has good, marketable title to the Premises, is lawfully seized of the Premises in fee simple and has full power to convey the same and to execute this Mortgage; (b) Mortgagor warrants and will defend the title to the Premises against the claims and demands of all persons whomsoever; (c) there are no suits or proceedings pending or threatened against or affecting Mortgagor and pertaining to the Premises; (d) Mortgagor will keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed; and (e) Mortgagor will make any further assurances of title that Mortgagee may reasonably require.

## **ARTICLE 3**

### **Covenants**

Mortgagor covenants and agrees with Mortgagee as follows:

3.1 Payments. Mortgagor shall pay to Mortgagee, when due, all payments required under the Note and all other Indebtedness at the times and in the manner provided in the Note and the Mortgage, now owing or to be owed by Mortgagor.

### 3.2 Impositions and Insurance.

(a) Payment. Mortgagor shall pay, when due according to law and as applicable to Mortgagor and the Premises, all taxes, assessments and other charges which are now due or may hereafter be imposed or assessed upon the Premises, or that may be imposed or assessed against the holder of this Mortgage and the Note by reason of ownership thereof, by any authority. Until the Indebtedness is paid and performed in full, Mortgagor shall obtain and keep in effect at Mortgagor's expense for the benefit of Mortgagee with respect to the Premises insurance against loss of or damage to the Improvements and Real Property by fire and other hazards covered by extended coverage or all-risk special form property insurance, flood insurance, if applicable, and public liability insurance against claims for bodily injury, death or property damage, all in customary and adequate amounts as determined in Mortgagee's reasonable discretion. During the course of any construction or repair of the Premises, Mortgagor shall ensure that all contractors and subcontractors maintain workers compensation insurance for all employees involved in such construction or repair, and builder's risk completed value insurance against "all risks of physical loss," covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy upon completion of work or occupancy" endorsement.

(b) Policy Requirements. The policies of insurance required by this Section 3.2 shall insure the respective interests of Mortgagor and Mortgagee. The insurance proceeds from all such policies of insurance (other than the proceeds from the public liability policy required above) shall be payable to Mortgagee pursuant to a noncontributing first mortgagee endorsements satisfactory in form and substance to Mortgagee. Certificates of the original policies and renewals thereof covering the risks provided by this Mortgage to be insured against, and bearing satisfactory evidence of payment of all premiums thereon, shall be delivered to and held by Mortgagee on demand.

(c) Application of Proceeds. All insurance proceeds received by Mortgagor, other than those relating to public liability insurance, shall be held in trust for and paid promptly to Mortgagee, and Mortgagee may deduct from such proceeds any expenses incurred by Mortgagee in connection with adjusting and obtaining such proceeds (the balance remaining after such deduction being hereinafter referred to as the "Net Insurance Proceeds"). Mortgagee may, at its option, either: (1) apply the Net Insurance Proceeds in reduction or satisfaction of all or any part of the Indebtedness, whether then matured or not, in which event Mortgagor shall be relieved of its obligation to maintain and restore the Premises relating to such proceeds to the extent that Mortgagee so applies such Net Insurance Proceeds; or (2) release the Net Insurance Proceeds to Mortgagor in whole or in part upon conditions satisfactory to Mortgagee. If there is no Event of Default at the time of the event giving rise to the insurance claim or thereafter, Mortgagor shall have the right to adjust and compromise any such claims, subject to Mortgagee's prior consent thereto, which consent shall not be unreasonably withheld. The application of any insurance proceeds toward the payment or performance of the Indebtedness shall not be deemed a waiver by Mortgagee of its right to receive payment or performance of the rest of the Indebtedness in accordance with the provisions of this Mortgage, the Loan Documents and in any amendments,

modifications or restatements to any of the foregoing. If the Premises are sold following foreclosure, or if Mortgagee acquires title to the Premises, Mortgagee shall have all the right, title and interest of the Mortgagor in and to any insurance policies and in and to the proceeds resulting from any damage to the Premises prior to such sale or acquisition.

3.3 Good Condition: Mortgagor shall use the Loan for the purposes stated in the Loan Agreement and shall otherwise keep the Premises in good condition and repair.

3.4 No Further Encumbrances; No Disposition. Mortgagor shall not make, create, or suffer to be made or created any sale, transfer, conveyance, assignment or further encumbrance or disposition of the Premises or any part thereof or any interest therein without Mortgagee's prior written consent; provided that Mortgagor shall be permitted to sell the Premises upon the completion of the rehabilitation work referenced in the Loan Agreement so long as the Note and all sums owed under the Loan Documents are paid in full at the closing of the sale. Mortgagor shall also not permit, and shall defend against, any lien or claim made by any contractor, subcontractor, material supplier, vendor or laborer with respect to the funds to be advanced to Mortgagor under the Loan Agreement. A sale, transfer, conveyance or assignment means the conveyance by the Mortgagor of any legal or equitable right, title or interest in the Premises, or any part thereof, whether such conveyance is voluntary or involuntary, by outright sale, deed, installment sale contract, land contract, lease option contract, or any other method of transferring any interest in real property.

#### **ARTICLE 4** **Events of Default**

Each of the following shall be deemed to be an "Event of Default" under this Mortgage:

4.1 Mortgagor's failure to timely and fully make any payment required to be made under the Note, this Mortgage or any other Loan Document.

4.2 Mortgagor's failure to obtain and keep in force at all times all insurance coverages in accordance with the terms of this Mortgage.

4.3 Except as provided in 4.2 above, Mortgagor's failure to timely and fully perform or observe any other covenant, term or condition or agreement contained in the Note, this Mortgage, or any other agreement, document or instrument furnished in connection with the Loan, if such default is not remedied within thirty (30) days after Mortgagee gives Mortgagor written notice of such failure.

4.4 The occurrence of any Event of Default or any breach under the Note or any other Loan Document.

## ARTICLE 5

### Remedies

5.1 Mortgagee's Remedies. Upon the occurrence of an Event of Default, Mortgagee shall have the right to exercise all rights and remedies provided by law or in equity to which Mortgagee is entitled, including without limitation, the following:

(a) the right to proceed to protect and enforce its rights by any action at law, in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or for an injunction against a violation of any of the terms, conditions, or provisions hereof or in the aid of the exercise of any power granted hereby or by law;

(b) the right to declare the entire amount of the Note and all interest thereon, or, at its option, any part of the foregoing, to be immediately due and payable without further demand or notice;

(c) the right to, at any time or from time to time, proceed at law or in equity or otherwise to foreclose the lien on this Mortgage as against all or any part of the Premises;

(d) upon the filing of a suit or other commencement of judicial proceeding to enforce the rights of the Mortgagee under this Mortgage, Mortgagee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Premises and to receive all receipts therefrom pending such proceedings, with such power as the court making such appointment shall confer; and

(e) the right to demand that Mortgagor surrender the possession of the Premises, to take possession of all or any part of the Premises together with all books, papers and accounts of Mortgagor pertaining thereto and to operate and manage the same and from time to time to make all needful repairs and improvements as Mortgagee may deem reasonable; and to lease the Premises or any part thereof in the name of and for the account of the Mortgagor and to collect and receive and sequester the rents, revenues and other income after deducting all proper costs and expenses of so taking, holding and managing the same including reasonable compensation to Mortgagee.

5.2 Rights and Remedies Cumulative; No Waiver or Release of Obligation. The Mortgagee's rights and remedies as provided in this Mortgage, the Note and any other Loan Documents, and in the warranties contained in this Mortgage and in the other Loan Documents shall be cumulative and concurrent, may be pursued separately, successively or together against Mortgagor or against the Premises, or both, in the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. Any failure by Mortgagee to insist upon strict performance by Mortgagor or any of the terms and provisions of this Mortgage, the Note or any other Loan Documents shall not be deemed a waiver of any of the terms or provisions of this Mortgage, the Note or other Loan Documents. No delay or omission to exercise any right or

power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right and power may be exercised from time to time and as often as may be deemed expedient.

5.3 Expenses. Upon an Event of Default, Mortgagor shall pay to Mortgagee such further amount as shall be sufficient to reimburse it fully for all costs and expenses of collection of the Note and the enforcement of any security for the Note including without limitation, Mortgagee's fees and expenses for enforcing this Mortgage or any rights hereunder, reasonable attorneys', accountants' and appraisers' fees and expenses, court costs and any taxes and fees or government charges incident to such enforcement of rights and collection.

## **ARTICLE 6**

### **Miscellaneous**

6.1 Binding Effect. All of the terms, covenants and conditions of this Mortgage shall bind Mortgagor and its successors and assigns and shall inure to the benefit of and be available to Mortgagee, and its successors and assigns.

6.2 Interpretation; Time of the Essence. All references to Mortgagor and Mortgagee shall be read in the singular or plural and in the masculine, feminine, or neuter gender, as the sentence may require. Time is of the essence with respect to each and every obligation of Mortgagor under the Note, this Mortgage and the other Loan Documents.

6.3 Governing Law. This Mortgage shall be governed by the laws of the State of Ohio. In the event that any of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given affect without the conflicting provisions, and to this end the provisions of this Mortgage are declared to be severable.

6.4 Covenants Run With Land. All of the covenants of this Mortgage shall run with the land constituting the Premises.

6.5 Open-End Mortgage. In accordance with the provisions of Ohio Revised Code Sections 5301.232 and 5301.233, this Mortgage is given to, and the parties intend that it shall secure, among other items, indebtedness in a maximum principal amount of Fifty Thousand Dollars ( \$50,000.00 ) evidenced by the Note, which indebtedness may include advances made by Mortgagee after this Mortgage is filed of record. The making of such advances is obligatory on the part of Mortgagee subject to the terms and conditions provided for in the Note, this Mortgage and any other Loan Documents. The maximum amount of the unpaid balance of such indebtedness, in the aggregate and exclusive of interest thereon, which is or will be outstanding at any time, is that set forth above, provided that this Mortgage shall also secure unpaid balances of advances made for the payment of taxes, assessments, insurance premiums, or costs incurred for the protection of the Premises.

6.6 Ohio Revised Code Section 1311.14. Mortgagor covenants and agrees with Mortgagee that Mortgagee may, at its option, do all things provided to be done by a Mortgagee under Section 1311.14 of the Ohio Revised Code, and any amendments or supplements thereto, for the protection of Mortgagee's interest in the Premises.

NOW, THEREFORE, if Mortgagor shall well and truly pay and discharge the Indebtedness as the same shall become due and payable and shall perform and observe all of the terms, covenants and conditions to be performed and observed by Mortgagor hereunder, then this conveyance shall be null and void and shall be released by Mortgagee at the expense of Mortgagor; otherwise this Mortgage is to remain in full force and effect.

Mortgagor has executed this Mortgage as of the year and date first stated above.

MORTGAGOR:

CITY OF WEST CARROLLTON  
an Ohio \_\_\_\_\_

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

Printed Name: Brad Townsend

Title: City Manager

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, an Ohio \_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT PREPARED BY:

Shannon L. Costello, Esq.

Coolidge Wall Co., L.P.A.

33 West First Street, Suite 600

Dayton, Ohio 45402

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EXHIBIT A

Legal Description of the Real Property

Parcel No. K48 00107 0032

Property Address: 323 Central Ave E West Carrollton, Montgomery County, Ohio 45449

Being Lot Numbered One Hundred Sixty Five (165) of the consecutive numbers of lots in the City of West Carrollton, Ohio.

## PROMISSORY NOTE

\$ 50,000.00

\_\_\_\_\_, 2020  
Dayton, Ohio

For value received, The City of West Carrollton, Ohio ("Borrower"), hereby promises to pay to the order of MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION, an Ohio corporation for non-profit ("Lender"), the principal sum of Fifty Thousand DOLLARS ( \$50,000.00 ), together with interest at one percent (1%) per annum on the unpaid principal balance. The unpaid principal balance of this Note and all accrued unpaid interest on this Note will be due and payable in full upon the earlier to occur of (a) the conveyance, transfer or other disposition by Borrower of any interest in the Mortgaged Property (as defined below), or (b) the second anniversary of the date of this Note.

This Note is issued under and entitled to the benefits of the Montgomery County Land Reutilization Corporation Community Residential Rehab Loan Program Agreement dated the same date as this Note (the "Loan Agreement"), between Borrower and Lender, to which Loan Agreement reference is made for a statement of the rights in respect thereto of the Lender.

This Note is secured by a mortgage dated the same date as this Note (the "Mortgage") signed by Borrower and granting to Lender a first mortgage on the real property known as 323 E Central Ave, Parcel Number K48 00107 0032, Montgomery County, Ohio, as more particularly described in the Mortgage (the "Mortgaged Property"), and all amendments, modifications, supplements, substitutions, additions, renewals, replacements and extensions of the Mortgage. Lender's rights and remedies under this Note are stated in the Mortgage and include, without limitation, the right to declare all indebtedness secured by the Mortgage, including the principal balance of this Note and accrued interest, immediately due and payable in case of an Event of Default (as defined in the Mortgage). If Borrower sells, transfers, encumbers or otherwise disposes of the Mortgaged Property or any interest in the Mortgaged Property, in violation of the terms of the Mortgage, then, at the option of Lender, the entire indebtedness secured by the Mortgage, together with all accrued interest, will be immediately due and payable without notice or demand.

All payments due under this Note shall be made in lawful money of the United States of America, in immediately available funds, to Montgomery County Land Reutilization Corporation at 130 W Second Street Suite 1425, Dayton, Ohio, 45402 or at such other place as Lender may designate in writing.

No delay or omission by Lender in exercising any right under this Note or the Mortgage will operate as a waiver of such right or of any other right under this Note or the Mortgage. Borrower will pay on demand all costs of collection, court costs, legal expenses and attorneys' fees incurred or paid by Lender in collecting and enforcing this Note and the Mortgage.

Borrower waives presentment for payment, demand, notice of nonpayment, notice of intention to accelerate the maturity of this Note, diligence in collection, commencement of suit against any obligor, notice of protest, and protest of this Note and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, before or after maturity of this Note, with or without notice to Borrower, and agrees that Borrower's liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Lender. Borrower consents to all extensions of time, renewals, waivers or modifications that may be granted by Lender with respect to the payment or other provisions of this Note.

CITY OF WEST CARROLLTON

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

Printed Name: Brad Townsend

Title: City Manager

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version: 2  
10/13/15 11:36 AM

**MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION  
COMMUNITY RESIDENTIAL REHAB LOAN PROGRAM AGREEMENT**

THIS AGREEMENT is entered into as of \_\_\_\_\_, 2020, by and between MONTGOMERY COUNTY LAND REUTILIZATION CORPORATION, an Ohio corporation for non-profit, having an address of 130 W. Second Street, Suite 1425, Dayton, Ohio 45402 ("MCLRC"), and the City of West Carrollton, MONTGOMERY COUNTY, OHIO, an Ohio municipal corporation (the "Participant").

W I T N E S S E T H:

WHEREAS, in August of 1961, O.R.C. Section 1724.01 became effective and provided for the establishment of county land reutilization corporations for the purpose of facilitating the reclamation, rehabilitation and reutilization of vacant, abandoned, tax-foreclosed or other real property within the county for whose benefit the corporation is organized and the purpose of promoting economic and housing development in the county; and

WHEREAS, pursuant to O.R.C. Section 1724.02, MCLRC has, among other powers, the power to do all acts and things necessary or convenient to carry out the purposes of O.R.C. Section 1724.01; and

WHEREAS, the Participant has requested that MCLRC extend funds for use by Participant in connection with rehabbing a single-family home situated within the boundaries of the City of West Carrollton, Ohio, which rehab work is referred to in this Agreement as the "Project," and which home is located at 323 E Central Avenue and referred to the "Project Property" as more specifically described on Schedule 1; and

WHEREAS, upon the completion of the rehabilitation work, such single-family home will be conveyed by Participant; and

WHEREAS, in addition to the statutory authority referenced above, on or about January 17, 2012, the Board of Directors of MCLRC (the "Board") approved the Land Bank Priorities and Policies, which include at Section 8 a Financing Policy supporting the loan of funds to municipalities for rehabilitation of homes for conveyance to owner-occupants; and

WHEREAS, MCLRC and the Participant are desirous of mutually cooperating to complete the Project on the terms and conditions stated in this Agreement; and

WHEREAS, the Participant has supplied MCLRC with proof that it possesses sufficient statutory or other legal authority and management capability needed to assume the primary administration of the Project; and

WHEREAS, in light of the foregoing, MCLRC is willing to loan funds to Participant for the Project on the terms and conditions stated in this Agreement; and

WHEREAS, MCLRC's Executive Director (the "Director") has authority to enter into agreements with Participant on behalf of MCLRC for the purpose of loaning funds for use in connection with the Project.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements stated in this Agreement, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. Participant agrees to assume the responsibility of administering the Project and will use the Loan Funds specifically and exclusively to make real property improvements in accordance with terms of the Mortgage (as defined in Section 2 of this Agreement) and all

applicable legal requirements. The Loan Funds will not be used for soft costs, including without limitation, architectural fees, title charges and premiums, permitting fees and charges, and real estate commissions. Participant represents and warrants that it is the sole lawful owner of fee simple title to the Project Property and has good and marketable title to the same and that the Project Property is unencumbered except for the Mortgage (as defined in Section 2 of this Agreement), real estate taxes and assessments that are a lien but not yet due and payable and general utility easements that do not impair the use of the Project Property as a single-family home. Participant will not permit any other liens or encumbrances on title to the Project Property during the term of the Mortgage.

2. MCLRC agrees to extend to Participant a loan (the "Loan") in the total principal sum of Fifty Thousand Dollars (\$50,000.00) (the "Loan Funds"), which Participant agrees to use solely and exclusively to offset the costs of making real property improvements to the Project Property. The Loan will be evidenced by a promissory note from Participant payable to the order of MCLRC (the "Note"), which Note will provide that the Loan bears interest at the rate of one percent (1%) per annum and that the Loan will be repaid in full upon the earlier to occur of (a) the conveyance, transfer or other disposition by Participant of any interest in the Project Property or (b) the second anniversary of the date of the Note. The Note will be secured by a first mortgage lien granted by Participant to MCLRC on the Project Property (the "Mortgage"). Upon Participant's signature of the Note, the Mortgage and this Agreement, Participant will pay to MCLRC a fee of Five Hundred Dollars (\$500.00) in connection with the Loan (the "Loan Fee").

3. Upon the parties' signature of this Agreement, the Note, the Mortgage and all other documents, instruments and agreements required by the Director in connection with this Agreement and payment of the Loan Fee, MCLRC agrees to advance to Participant the full amount of the Loan Funds. Participant agrees to deliver to the Director each month, or at any other interval indicated by the Director, regular statements, together with invoices, bills and other supporting documentation, detailing the work that has been completed to date, the work that remains to be completed, the amount of monies expended by Participant in the furtherance of the Project, and an estimate of the amount of monies required to complete the Project. The detail in these statements will include the date of each expenditure, the name of the person or business paid, the goods or services for which payment is owed, and any other information reasonably requested by the Director. Upon completion of the Project, Participant will deliver to the Director a report certifying Participant's expenditures for the total Project, including all financial sources used for the Project.

4. If MCLRC determines that any portion of the Loan Funds were used for any purpose other than for the Project and in accordance with this Agreement, then Participant will repay MCLRC the amount improperly expended within fourteen (14) calendar days after written notice to it by MCLRC that such an improper expenditure has occurred. MCLRC will state in the notice the amount that it believes has been misapplied.

5. Participant agrees that it will maintain all documentation, financial records and other evidence of activities related to the Project, consistent with the records retention requirements of the Ohio Revised Code, for a period of three (3) years after the completion or

termination of the Project. After this three (3) year retention period, Participant must notify MCLRC, in writing, of its intent to destroy said records. MCLRC reserves the right to extend the retention period for such records, and if it decides to do so, it will notify Participant in writing. Otherwise, MCLRC will issue to Participant a written Certificate of Records Disposal, it being understood that no records in Participant's possession will be destroyed until Participant has received a Certificate of Records Disposal. Participant also agrees to notify persons or business entities with which it does business in the prosecution of the work comprising the Project of the fact that such person or business entity is receiving public funds and that such funds may be audited by the County Auditor or the State Auditor even though they have been received by a private person or business entity.

6. Under no circumstances will MCLRC be responsible or liable to any person or business for, or on account of, any disbursement of, or failure to disburse, the Loan Funds or any part thereof, and no contractor, subcontractor, vendor, material supplier, laborer or other party will have a right or claim against MCLRC under this Agreement or in connection with the administration of the Loan. Participant will not permit to be made, and will defend against, any claims or liens asserted against the Loan Funds by any contractor, subcontractor, vendor, material supplier, laborer or other party in connection with work performed or materials supplied to the Project.

7. MCLRC will have no duties or obligations whatsoever in connection with the work to be performed pursuant to this Agreement and will have no other obligations except to advance the Loan Funds subject to and in accordance with the terms and conditions of this

Agreement, the Note and the Mortgage. MCLRC will not be responsible for the performance or default by Participant or any contractor, subcontractor, vendor, material supplier or other party and will not be responsible in any manner with respect to the construction, completion, protection or correction of any work performed as part of the Project or the payment of any costs or expenses incurred in connection with the Project or any other obligations of Participant. Except as expressly stated in this Agreement, nothing in this Agreement, the Note, the Mortgage or otherwise will be construed as any warranty or representation of any kind by MCLRC with respect to the Project or otherwise.

8. The parties agree that this Agreement will not be assigned by Participant.

9. During the performance of this Agreement, Participant will not discriminate against any employee or applicant for employment, or any person or business entity considered for engagement by Participant in connection with the Project, because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Participant will ensure that applicants are employed, that employees are treated during employment and that persons and businesses engaged in the Project are treated, without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action will include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Participant and all persons claiming through Participant agree not to establish or knowingly permit any such practice or

practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Participant.

10. No remedy provided in this Agreement, the Note or the Mortgage is exclusive of any other available remedy or remedies, but each is cumulative and in addition to every other remedy given to MCLRC under this Agreement, the Note, the Mortgage or now or hereafter existing at law or in equity. All monies advanced by MCLRC under the terms of this Agreement and the Mortgage, and all amounts paid, suffered or incurred by it in exercising any rights given to it, will be secured by the Mortgage.

11. No delay or omission of MCLRC in exercising or enforcing any of its rights, powers, privileges, discretion or remedies will constitute a waiver thereof, and no waiver by MCLRC of any default of Participant under this Agreement, the Note or the Mortgage will operate as a waiver of any other default. No term or provision of this Agreement, the Note or the Mortgage will be waived except with the prior written consent of MCLRC.

12. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance is held by a court of competent jurisdiction to be invalid, unenforceable or illegal, then the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid, unenforceable or illegal, will not be affected thereby, and each remaining term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

13. This Agreement contains the entire agreement of the parties with respect to the subject matter addressed in this Agreement, provided that Participant and MCLRC, as

applicable, will sign and deliver the Note, the Mortgage and any other documents, instruments and agreements required by the Director to effectuate this Agreement. This Agreement will supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. This Agreement will not be modified in any manner except by an instrument, in writing, signed by the parties to this Agreement and approved by proper Resolution of the parties, if necessary.

14. This Agreement and any modifications, amendments, or alterations, are governed, construed, and enforced under the laws of The State of Ohio.

15. The signatures to this Agreement will act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

[Signature page follows immediately]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

Signed and acknowledged  
in the presence of:

MONTGOMERY COUNTY LAND  
REUTILIZATION CORPORATION

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Michael J. Grauwelman  
Executive Director

\_\_\_\_\_  
Witness

CITY OF WEST CARROLLTON  
MONTGOMERY COUNTY, OHIO

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Brad Townsend

\_\_\_\_\_  
Witness

Title: City Manager

APPROVED AS TO FORM:  
DAVID WILLIAMSON  
GENERAL COUNSEL, MCLRC

SCHEDULE 1

Legal Description of the Real Property

Parcel No. K48 00107 0032

Property Address: 323 Central Ave E West Carrollton, Montgomery County, Ohio 45449

Being Lot Numbered One Hundred Sixty Five (165) of the consecutive numbers of lots in the City of West Carrollton, Ohio.