Contract No. ________________

FUNDING AGREEMENT

between the

CITY OF CINCINNATI

and

WHEX GARAGE LLC

Project Name: Whex Garage Acquisition
(contribution of City funds for acquisition of Whex Garage located at 212 W. Fourth Street in the Central Business District of Cincinnati)

Date: ________________________, 2023

FUNDING AGREEMENT

(Whex Garage Acquisition)

This Funding Agreement (this "**Agreement**") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **WHEX GARAGE LLC**, an Ohio limited liability company ("**Developer**"), a wholly owned subsidiary of CINCINNATI CENTER CITY DEVELOPMENT CORPORATION ("**3CDC**").

Recitals:

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

B. Pursuant to that certain *Development Management Services Agreement* dated [_________], 2023, between the City, the Board of County Commissioners of Hamilton County, Ohio (the "**County**"), and 3CDC Development Manager, LLC ("**Manager**"), an affiliate of Developer and wholly owned subsidiary of 3CDC, the City and the County engaged Manager to, among other things, provide general planning and development services as it relates to property within the District (the "**Services**").

C. As part of the Services and in furtherance of the parties' redevelopment efforts within the District, 3CDC entered into a *Membership Interest Purchase Agreement* dated August 29, 2022 (the "**Purchase Agreement**"), with Carell Ohio, LLC ("**Seller**"), to purchase certain real property located at 212 W. Fourth Street in the Central Business District of Cincinnati, upon which is located a 780-space parking garage commonly known as the Whex Garage (the "**Garage**"), which property is located within the District and is more particularly described on Exhibit A (*Legal Description*) hereto (the "**Property**").

D. Pursuant to the Purchase Agreement and other separate agreement(s) with the Port of Greater Cincinnati Development Authority (the "**Port**"), the Port or a wholly owned subsidiary of the Port will acquire title and lease the Property to Developer.

E. Developer is financing the acquisition of the Property (the "**Acquisition**") by obtaining (i) a 166 loan from the State of Ohio (the "**State**") in the amount of $7,000,000 (the "**State Loan**") and (ii) a loan from The Cincinnati Equity Fund III, Ltd. ("**CEFIII**") in the amount of $4,100,000 (the "**CEFIII Loan**," and collectively with the State Loan, the "**Loans**"). Any documents with respect to the Acquisition with Developer, the Port, the State, CEFIII, and/or the County to which the City is a party, or executed by Developer in favor of the City, are referred to herein as the "**Project Documents**".

F. To facilitate the Acquisition and promote its economic feasibility, the City will, subject to appropriation, transfer to a separate City account (the "**City Account**") City funds in an amount not to exceed $275,000 per year for 7 years (each such appropriation and transfer being referred to herein as "**Pledged Funds**"), for a total contribution not to exceed $1,925,000 (collectively, the "**City Funds**"), to be set aside and made available to the extent the other sources of repayment for the State Loan are insufficient to pay principal, interest, and other amounts due with respect to the State Loan (the "**Loan Obligations**"), until all Loan Obligations have been satisfied. The City currently anticipates that any City Funds will be paid from revenues the City receives in connection with the District 2-Downtown South/Riverfront District Incentive District.

G. In determining to provide the City Funds, the City has acted in material reliance on the County providing a matching contribution of $275,000 per year for 7 years, for a total contribution of $1,925,000, in support of the Acquisition (the "**County Funds**").

H. The parties currently anticipate that the sources of repayment for the State Loan will include the following, in the order of application: (i) first, net operating income from the Garage; (ii) second, if

available, funds from the Debt Service Reserve (as defined below); (iii) third, to be drawn on equally, (a) subject to Council appropriation, the Pledged Funds, and (b) the annual contribution of the County Funds; and (iv) fourth, as necessary, 3CDC's corporate payment guaranty to the State (the "**Guaranty**").

I. Following the Acquisition, Developer will provide to the City a more comprehensive redevelopment plan for how the Property will be utilized in support of the DECC and the District (the "**Redevelopment**"; and collectively with the Acquisition, the "**Project**").

J. The City, upon recommendation of the City's Department of Community and Economic Development ("**DCED**"), believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; for this reason, the City desires to facilitate the Project by providing the assistance as described herein.

K. Execution of this Agreement was authorized by Ordinance No. ____-2023, passed by City Council on _________________, 2023.

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

1. Term. The term of this Agreement shall commence on the Effective Date, and unless sooner terminated as herein provided, shall end on the date that the Loan Obligations have been satisfied and Developer has satisfied all other obligations to the City under this Agreement (the "**Term**"). Any and all obligations of Developer that have accrued but have not been fully performed as of such termination or expiration date shall survive such termination or expiration until fully performed.

2. Project. Subject to the terms of this Agreement, Developer shall complete the Project in accordance with Exhibit B (*Statement of Work and Budget*) hereto.

(A) Acquisition. Not later than March 31, 2023, Developer shall cause the Property to be acquired by the Port (the "**Closing**"). Developer warrants that, at Closing, the Port shall obtain fee simple title to the Property and lease the same to Developer, free and clear of all liens and encumbrances except for recorded utility easements, mortgages associated with the Loans, and other encumbrances, if any, that will not impair or impede the Redevelopment or the future use of the Property in support of the District (collectively, the "**Permitted Encumbrances**"). At Closing, Port and/or Developer, as applicable, shall execute all customary closing documents and provide copies to the City. Developer shall be responsible for all costs of Closing, including, without limitation, closing, escrow, and recording fees and any other commercially reasonable costs or expenses necessary to complete the transaction contemplated by this Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement shall automatically terminate, and thereafter neither party shall have any right or obligations to the other, if for any reason the Closing does not occur by April 30, 2023; *provided however*, upon Developer's request, the Director of DCED may, in his or her sole and absolute discretion, extend such timeframe by providing written notice to Developer.

(B) Redevelopment. Subject to the terms of this Agreement, Developer shall complete the Redevelopment in accordance with Exhibit B hereto.

3. Due Diligence Materials. Developer shall provide the below due diligence materials to the City (the "**Due Diligence Materials**"). Once the Due Diligence Materials have been approved by the City, Developer shall not make or permit any changes thereto without the prior written consent of the Director of DCED. Prior to Closing, among other things, the following conditions must have been satisfied or waived in writing in the City's sole and absolute discretion:

(A) Title Commitment. Developer must present a commitment of title insurance for the Property, for issuance of both an owner's policy, prepared by a reputable national title insurance company and in such form acceptable to the City, evidencing the title company's commitment to issue an Owner's Policy of Title Insurance to the Port.

(B) Evidence of Clear Title. Developer must present evidence, satisfactory to the City, that the Port has acquired title or will acquire title to the Property in fee simple absolute, and that said title is free, clear, and unencumbered, except for the Permitted Encumbrances.

(C) Environmental Report. Developer must present the City with an up-to-date Phase I Environmental Assessment showing no recognized environmental conditions on the Property. The Phase I must be in such form acceptable to the City, and the City must be permitted to rely on such Phase I.

(D) Final Budget. Developer must provide the City with a final itemized budget for the Project, generally consistent with the budget shown on Exhibit B.

(E) Insurance. Developer must present evidence that all insurance policies required under this Agreement have been secured.

(F) Financing. Developer must provide the City with evidence, satisfactory to the City, that it has secured all financing necessary for the Acquisition. Any changes in Acquisition financing and/or costs are subject to further review and approval by the City.

(G) Other Information. Developer must provide to the City such other information and documents pertaining to Developer or the Project as the City may reasonably require.

(H) No Default. Developer shall be in full compliance with all requirements under this Agreement.

4. Acquisition Financing.

(A) Garage Revenues. As used in this Section, (i) "**Garage Revenues**" means all user fees or other revenue generated from the operation of the Garage; (ii) "**Capital Expenses**" means expenses of any work or purchases that are reasonably required to be performed in the Garage, that are not routine, and which are necessitated by any damage, destruction, ordinary wear and tear, defects in construction or design, or any other cause; and (iii) "**Operating Expenses**" means commercially reasonable costs associated with the operations of the Garage, including charges for gas, electricity, water, sewer, telephone and other utilities, insurance costs, real estate taxes and installments of assessments that become due and payable after the Acquisition, salaries, wages, and benefits paid to persons employed in connection with the operation of the Garage, and routine repair and maintenance.

(i) *Allocation of Parking Revenues*. Developer shall cause the Garage Revenues to be allocated in the following order of priority:

(a) First, to the payment of Operating Expenses;
(b) Second, to the payment of all scheduled principal and interest payments on the Loans;
(c) Third, to the payment of a management fee to Developer in an amount not to exceed 5% of Garage Revenues;
(d) Fourth, to the replenishment of the Operating and Capital Improvement Reserve (as defined below), as necessary; and
(e) Fifth, to the payment of any remainder amount into the Debt Service Reserve (this amount, being the Garage Revenues *less* (a)-(d) above, being referred to herein as the "**Net Garage Revenues**").

(ii) *Operating and Capital Improvement Reserve*. As used in this Section, "**Operating and Capital Improvement Reserve**" means an amount that Developer will set aside, which will pay (a) Operating Expenses when Garage Revenues are insufficient and (b) Capital Expenses. While the Loan Obligations remain outstanding, Developer shall cause the Operating and Capital Improvement Reserve to have an initial balance of $200,000. For the avoidance of doubt, the Operating and Capital Improvement Reserve does not have to be a separate account; *provided, however*, that Developer shall maintain the Operating and Capital Improvement Reserve as a separate line item in the budget at all times.

(iii) *Debt Service Reserve*. As used in this Section, "**Debt Service Reserve**" means an amount managed by Developer, which will pay scheduled principal and interest payments on the Loans in the event the Garage Revenues are insufficient to do so. While the Loan Obligations remain outstanding, Developer shall cause the Debt Service Reserve to be established and maintained, if funded from excess amounts in accordance with Section 4(A)(i). To the extent there are Net Garage Revenues in the Debt Service Reserve in any year, Developer agrees and acknowledges that those funds shall be drawn upon before the City's Pledged Funds. For the avoidance of doubt, the Debt Service Reserve does not have to be a separate account; *provided, however*, that Developer shall maintain the Debt Service Reserve as a separate line item in the budget at all times.

(B) Pledged Funds. To facilitate the Acquisition financing, subject to the terms and conditions of this Agreement, the City shall, subject to appropriation, transfer the Pledged Funds to the City Account. For the avoidance of doubt, Developer acknowledges that the City's direct financial assistance is limited to the City Funds identified in this Agreement, which shall be used exclusively to facilitate the Acquisition financing.

(i) *Use of Pledged Funds*. The Pledged Funds shall be made available to the State, by means of a Deposit Account Control Agreement substantially in the form of Exhibit C (*Form of DACA*) attached hereto (the "**DACA**"), to the extent that the Garage Revenues are insufficient to pay the Loan Obligations then due and payable. At maturity on the State Loan, any funds remaining in the City Account may (a) first, be applied to the final payment of any outstanding amounts due on the State Loan or, as necessary, to the payment of any outstanding amounts due on the CEFIII Loan; and (b) second, removed from the City Account, to be retained by the City and used by the City for any lawful purpose.

(ii) *Conditions of Pledged Funds*. The City's funding commitment provided for herein shall be subject to and contingent upon (a) the execution and continued effectiveness of this Agreement, the DACA, and all other Project Documents; and (b) the continued effectiveness of Developer's agreement with the County for the County to provide the County Funds. For the avoidance of doubt, once all Loan Obligations have been satisfied, the City's obligation hereunder to provide any City Funds shall terminate, and any amounts that remain outstanding in the City Account shall be removed from the City Account, to be retained by the City and used by the City for any lawful purpose.

(C) County Funds. Developer represents to the City that the County is providing the County Funds to facilitate the Acquisition financing. Developer hereby agrees that the City Funds and the County Funds shall be drawn on a pro rata basis, such that the City and the County will be contributing equal amounts to pay any Loan Obligations then due and payable, subject to and in accordance with Section 4(B)(i) above.

5. Reserved.

6. Insurance; Indemnity.

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

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

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

7. Casualty; Eminent Domain. If the Project or the Property, or any improvements thereon made pursuant to the Project, is damaged or destroyed by fire or other casualty during construction, or if any portion of the Property is taken by exercise of eminent domain (federal, state, or local), Developer shall cause the Property to be repaired and restored, as expeditiously as possible, and to the extent practicable, to substantially the same condition that existed immediately prior to such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all reconstruction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining the City's approval of the plans and specifications for the construction of the Project if they deviate from the final Plans and Specifications as initially approved by the City hereunder. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Project or the affected Property is being repaired or restored.

8. Default; Remedies.

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

(i) the failure by Developer to use any of the City Funds in accordance with this Agreement;

(ii) the dissolution, other than in connection with a merger, of Developer, the filing of any bankruptcy or insolvency proceedings by Developer, or the making by Developer of an assignment for the benefit of creditors, or the filing of any bankruptcy or insolvency proceedings by or against Developer, the appointment of a receiver (temporary or permanent) for Developer or the Property, the attachment of, levy upon, or seizure by legal process of any property of Developer, or the insolvency of Developer, unless such appointment, attachment, levy, seizure, or insolvency is cured, dismissed, or otherwise resolved to the City's satisfaction within 30 days following the date thereof;

(iii) The occurrence of a Specified Default (as defined below), or any failure of Developer to perform or observe (or cause to be performed or observed, if applicable), any obligation, duty, or responsibility under this Agreement, or any other agreement or other instrument executed by Developer in favor of the City in connection with the Project, and failure by Developer to correct such default within 30 days after Developer's receipt of written notice thereof from the City (the "**Cure Period**"); *provided, however*, that if the nature of the default is such that it cannot reasonably be cured during the Cure Period, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within such Cure Period and thereafter diligently completes such cure within 60 days after Developer's receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise

constitutes an emergency as determined by the City in good faith, an event of default shall be deemed to have occurred if Developer fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency. As used in this section, "**Specified Default**" means the occurrence of:

(a) Misrepresentation. Any representation, warranty, or certification of Developer or of its affiliates made in connection with this Agreement, any other Project Documents, or any other agreement or instrument executed by Developer or its affiliates in favor of the City in connection with the Project shall prove to have been false or materially misleading when made.

(b) Financing Default. Developer otherwise defaults beyond any applicable notice and/or cure period under (1) this Agreement, or (2) the documentation for either the State Loan or the CEFIII Loan.

(B) Remedies. Upon the occurrence and during the continuation of an event of default under this Agreement which is not cured or corrected within any applicable Cure Period, the City shall be entitled to (i) terminate this Agreement by giving Developer written notice thereof and, without limitation of its other rights and remedies, and with or without terminating this Agreement, declare all amounts disbursed by the City with respect to the Loan to be immediately due and payable and demand that Developer repay to the City all such amounts, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Developer, and (iii) exercise any and all remedies available under the this Agreement, and (iv) exercise any and all other rights and remedies available at law or in equity, including, without limitation, pursuing an action for specific performance, all such rights and remedies being cumulative. Developer shall be liable for all costs and damages, including, without limitation, attorneys' fees, suffered or incurred by the City in connection with administration, enforcement, or termination of this Agreement or as a result of a default of Developer under this Agreement or the City's termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy shall not constitute a waiver of the breach of such covenant or of such remedy.

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

To the City:	To Developer:
Director	Whex Garage LLC
Dept. of Community and Economic Development	c/o Cincinnati Center City Development Corporation
City of Cincinnati	1203 Walnut Street, 4th Floor
805 Central Avenue, 7th Floor	Cincinnati, Ohio 45202
Cincinnati, Ohio 45202	Attn: Legal

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

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

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

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

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

(iv) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, or its parents, subsidiaries, or affiliates, or the Project, at law or in equity or before or by any governmental authority, which would materially adversely affect Developer's ability to perform Developer's obligations set forth in this Agreement.

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

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

(vii) Pursuant to Section 301-20, Cincinnati Municipal Code, neither Developer nor any of its affiliates are currently delinquent in paying any fines, penalties, judgments, water or other utility charges, or any other amounts owed by them to the City.

11. Reporting Requirements.

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

(B) Specific Reporting Requirements. Throughout the Term, Developer shall provide DCED with the following information and reports.

(i) *Budget*. At the beginning of each calendar year thereafter during the Term, Developer shall provide the City with an operating budget for the Garage for the upcoming year, which shall include any and all anticipated estimated Garage Revenues, estimated Operating Expenses, estimated Capital Expenses, and estimated management fees. The budget shall be in a form acceptable to the City.

(ii) *Operating Report*. No later than March 31st of each calendar year during the Term, Developer shall provide the City with a reasonably detailed, professionally-prepared operating statement, balance sheet, and report for the Garage (and such other financial statements and information as may be reasonably requested by the City) for the year then just ended showing in detail (a) the Garage Revenues,

Operating Expenses, Capital Expenses, and management fees for the calendar year; (b) the balances in the Operating and Capital Improvement Reserve as of the end of such year; (c) an attendance report showing the number of motor vehicles that were parked at the Garage during such year; (d) evidence of insurance policies required to be maintained under this Agreement; (e) information on activities in furtherance of the plan identified in Exhibit B; and (f) any and all other information regarding operations of the Garage as the City may from time to time reasonably request (each an "**Operating Report**"). The Operating Report shall be in a form acceptable to the City.

(C) City's Right to Inspect and Audit. Throughout the Term and for a period of 3 years after the expiration or termination of this Agreement, Developer shall permit the City, its employees, agents, and auditors to have full access to and to inspect and audit Developer's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer to the City, Developer shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

12. General Provisions.

(A) Assignment. During the Term of this Agreement, Developer shall not assign its rights or interests under this Agreement to a third party without the prior written consent of the City; and *provided*, that the City may require the execution of an amendment hereto or other clerical documentation to effect such assignment or substitution of parties. Any attempt by Developer to assign its rights or obligations under this Agreement without the City's consent shall, at the City's option, render this Agreement null and void.

(B) Entire Agreement; Conflicting Provisions. This Agreement (including the Exhibits hereto) and the other agreements referred to herein contain the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control. In the event that any of the provisions of this Agreement are in conflict or are inconsistent, the provision determined by the City to provide the greatest legal and practical safeguards with respect to the use of the Loan and the City's interests in connection with this Agreement shall control.

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

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

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal, or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

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

(I) Time. Time is of the essence with respect to Developer's performance of its obligations

under this Agreement.

(J) Recognition of City Assistance. Developer shall acknowledge the financial support of the City with respect to this Agreement in all printed promotional materials (including, without limitation, informational releases, pamphlets and brochures, construction signs, project and identification signage and stationery) and any publicity (such as but not limited to materials appearing on the Internet, television, cable television, radio or in the press or any other printed media) relating to the Project. In identifying the City as a funding source, Developer 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.

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

(L) No Brokers. The parties represent that they have not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

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

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

(O) Administrative Actions. To the extent permitted by applicable laws, all actions taken or to be taken by the City under this Agreement may be taken by administrative action and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement or the funding hereunder.

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

(Q) Transfer of Fee Title to Port. Nothing in this Agreement shall be construed to prohibit Developer from entering into a sale (or lease) and leaseback arrangement with respect to portion(s) of the Property in which fee or leasehold title to the Property (or any portion thereof) is held by the Port (the "**Port Arrangement**"); *provided, however*, that Developer shall provide the City with such documents and other information with respect to this arrangement as the City may reasonably request, including the final form of the Port Arrangement, at least 10 business days prior to any conveyance of any portion of the Property to the Port. Developer may not assign its rights, obligations, or any other interest under this Agreement to any other party except as in accordance with Section 12(A), but at any time, subject to the provisions of this paragraph, once Developer has obtained the fee interest in the Property, Developer may convey fee or leasehold interest to the Port, in the manner, and subject to the terms described, above. It is also understood and agreed that the Port may convey such interest back to Developer pursuant to the terms contained in the agreement memorializing the Port Arrangement. Developer hereby provides notice to the City that Developer will enter into the Port Arrangement.

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

Exhibit A – *Legal Description*
Exhibit B – *Statement of Work and Budget*

Exhibit C – *Form of DACA*
Exhibit D – *Additional Requirements*

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

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

WHEX GARAGE LLC

By: ______________________________

Title: _____________________________

Date: ______________________, 2023

CITY OF CINCINNATI

By: ______________________________
Sheryl M. M. Long, City Manager

Date: ______________________, 2023

Approved as to Form:

____
Assistant City Solicitor

Certified Date: _____________________

Fund/Code: _______________________

Amount: __________________________

By: ______________________________
Karen Alder, City Finance Director

Exhibit A
to Funding Agreement

Legal Description

TO BE ATTACHED

Exhibit B
to Funding Agreement

Statement of Work and Budget

I. **Statement of Work.**

Developer is financing the Acquisition of the Property and will work with the Port, the City, and the County to redevelop and incorporate the Property into the broader plan for the District. Developer will maintain the Garage as a public parking garage as Developer completes its broader redevelopment plan for the Convention District.

The Developer's work for the Property will include, without limitation:

- Developer will provide to the City a third-party capital needs assessment. Developer will utilize such assessment to inform the redevelopment strategy for the Property.
- Developer will continue providing public parking at the Property until Developer determines (i) to fully renovate the Garage to ensure long term public parking to serve the Convention District or (ii) to demolish or otherwise repurpose the Property to serve another function within the Convention District.

II. **Budget.**

Uses	
Acquisition	$ 11,900,000
Loan Origination Fee	52,424
Operating Reserve	200,000
Title	25,000
Legal	50,000
Misc Costs	15,000
Total Uses	**12,242,424**

Sources	
ODOD	7,000,000
CEFIII	4,018,182
Equity	1,224,242
Total Sources	**12,242,424**

Exhibit C
to Funding Agreement

Form of DACA

TO BE ATTACHED

Exhibit D
to Funding Agreement

Additional Requirements

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

This Exhibit serves two functions:

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

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

(A) Construction Workforce.

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

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

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

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

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

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

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

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

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

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

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which Developer receives City funds or other assistance (including, without limitation, the City's construction of public improvements to specifically benefit the Project, or the City's sale of real property to Developer at below fair market value).

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

(ii) Contracts and Subcontracts; Competitive Bidding.

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

city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction."

(b) Requirement. If CMC Chapter 321 applies to the Project, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

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

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

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

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

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

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

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

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

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

(D) Lead Paint Regulations. All work must be performed in compliance with Chapter 3742 of the Ohio Revised Code ("**ORC**"), Chapter 3701-32 of the Ohio Administrative Code, and must comply with

OSHA's Lead in Construction Regulations and the OEPA's hazardous waste rules. All lead hazard abatement work must be supervised by an Ohio Licensed Lead Abatement Contractor/Supervisor.

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

(F) Small Business Enterprise Program.[1]

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

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

(1) Including qualified SBEs on solicitation lists.

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

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

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

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

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as

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

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

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

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

(G) Equal Employment Opportunity.

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

(ii) Requirement. If this Agreement is subject to the provisions of CMC Chapter 325, the provisions thereof are hereby incorporated by reference into this Agreement.

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

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

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

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

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

(M) Wage Enforcement.

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

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

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

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

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

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

(e) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall post a conspicuous

notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to Cincinnati Municipal Code Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

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

(N) Americans With Disabilities Act; Accessibility.

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

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

(O) Electric Vehicle Charging Stations in Garages.

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

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

of providing a minimum of 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer, and the electrical room supplying the garage must have the physical space for an electrical supply panel sufficient to provide 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer.

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