



Contract Number _____

JOB CREATION TAX CREDIT AGREEMENT

This Job Creation Tax Credit Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined on the signature page hereof) by and between the CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), and PROSPIANT, INC., an Ohio corporation ("Grantee").

RECITALS

- A. The City seeks to increase employment opportunities and to encourage establishment of new jobs within the corporate boundaries of the City of Cincinnati (the "City Boundaries"), in order to improve the economic welfare of the City and its citizens, in furtherance of the public purposes enunciated in Article VIII, Section 13 of the Ohio Constitution.
- B. The City has determined that Grantee will create new jobs within the City Boundaries in connection with a project to be implemented by Grantee at 7108 Shona Drive, Cincinnati, Ohio 45237 (the "Project Site"), consisting of the construction of building improvements on the Project Site and the purchase of machinery, equipment, furniture and fixtures (the "Project").
- C. Cincinnati Municipal Code ("CMC") Chapter 311 imposes income taxes, including a tax on business net profits. Grantee represents and has documented to the City that the credit authorized by this Agreement against the tax imposed on Grantee's net profits under CMC Chapter 311 (the "City Income Tax Credit") is a major factor in Grantee's decision to go forward with the Project, to offset costs of capital expenditures and/or moving.
- D. The City Income Tax Credit as provided in this Agreement is authorized by Ohio Revised Code ("ORC") Sections 718.15 and 718.151.
- E. The City and Grantee intend that Grantee will implement the Project partly as a result of Grantee cost savings resulting from a forty percent (40%) City income tax credit applicable to new jobs created by Grantee at the Project Site for a period of eight (8) years, and thereby create 120 new jobs in the City within two (2) years of the Determination Date (as defined below).

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

- 1. PRECONDITIONS TO EFFECTIVENESS OF AGREEMENT. Notwithstanding anything to the contrary herein, this Agreement shall be of no force and effect unless and until (1) this Agreement is fully executed by both parties, and (2) the Council of the City of Cincinnati passes an ordinance approving this Agreement, and the ordinance takes effect.
- 2. CERTAIN DEFINITIONS. As used in this Agreement:
 - (A) "Aggregate Employees" means, for any stated period, the Number of Full-Time Employee Equivalents employed either by Grantee or by a Related Member (as defined in Section 2(N)), calculated with reference to all employees of Grantee and all Related Members of Grantee for which (1) the primary work location is within the City of Cincinnati and (2) Grantee or a Related Member withholds City income taxes.
 - (B) "City Tax Credit Term" means the 8-year term of 2025 through 2032.
 - (C) "Determination Date" means the Effective Date.

- (D) "Employment Retention Period" means a 16-year period commencing as of the start of the City Tax Credit Term.
- (E) "Grantee's City-Wide Employees" means, for any stated period, the Number of Full-Time Employee Equivalents employed by Grantee, calculated with reference to all employees of Grantee for which (1) the primary work location is within the City (not limited to the Project Site) and (2) Grantee withholds City income taxes. An employee is considered to have a primary work location within the City if at least fifty-one percent (51%) of the compensation paid by Grantee to that employee is taxed by the City with respect to work performed in the City.
- (F) "Income Tax Revenue" means, for any Tax Year:
- (1) Payments from Grantee to the City in an amount equal to the aggregate amount of earnings taxes withheld on the qualifying wages (as defined in CMC Section 311-9-Q) paid by Grantee to all Aggregate Employees whose primary work location is the Project Site; less
 - (2) Any amounts refunded by the City to Aggregate Employees whose primary work location is the Project Site (pursuant to CMC Chapter 311) relating to qualifying wages (as defined in CMC Section 311-9-Q) paid by Grantee, as such refunds are reported by the City to Grantee from time to time.
- (G) "Initial Tax Year" means the first Tax Year during which Grantee is entitled to a City Income Tax Credit.
- (H) "Minimum Qualifying Wage" means an hourly wage of at least (1) \$12.50 per hour on and after July 1, 2018, (2) \$13.50 per hour on and after January 1, 2019, and (3) \$15.00 per hour on and after July 1, 2019; *provided however*, that if (i) Grantee contributes to any health, vision and/or dental insurance plan; provides retirement benefits; or provides childcare, tuition, or training reimbursement benefits to a New Employee and (ii) the City approves in writing, in its sole and absolute discretion any such contribution, retirement, or reimbursement benefit, then the hourly cash value of any such City-approved benefit shall be added to the New Employee's base monetary hourly wage for the purposes of calculating that New Employee's hourly wage under this definition.
- (I) "Net Number of New Employees" means, for any Tax Year, the lesser of:
- (1) The average Number of New Employees over the twelve (12) months of that Tax Year; or
 - (2) The remainder computed by subtracting (a) the Baseline City-Wide Employment Level from (b) the average number of Grantee's City-Wide Employees over the twelve (12) months of that Tax Year; or
 - (3) The remainder computed by subtracting (a) the Baseline Aggregate Employment Level from (b) the average number of Aggregate Employees over the twelve (12) months of that Tax Year.

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

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

Grantee employed in employment positions that were relocated to the Project Site from other operations of Grantee (or of a Related Member) outside of the City Boundaries.

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

3. PROJECT; JOB CREATION AND RETENTION.

- (A) Grantee Representations. Grantee represents that:
- (1) The monthly average of the Number of Full-Time Employee Equivalents employed by Grantee, for whom the Project Site was the primary work location, for the three (3) full calendar month period immediately prior to the Determination Date was 0.
 - (2) The monthly average of Grantee's City-Wide Employees for the three (3) full calendar month period immediately prior to the Determination Date was 0 (the "Baseline City-Wide Employment Level").
 - (3) The monthly average of Aggregate Employees for the three (3) full calendar month period immediately prior to the Determination Date was 0 (the "Baseline Aggregate Employment Level").
 - (4) Related Members of Grantee with any employees whose primary work location is within the City Boundaries as of the Effective Date (and the Related Members' Cincinnati addresses and Federal Tax Identification Numbers) consist of the following: NONE.
 - (5) Grantee shall give written notice to the City of any Related Member that begins operations within the City Boundaries on or after the Effective Date.
 - (6) Grantee has employment procedures in place to monitor when its employees are performing work from home or remotely from a location other than the Project Site, and the amount of time spent working remotely that sufficiently enables Grantee to track Grantee's employees to determine their eligibility for consideration as City-Wide Employees, Aggregate Employees or New Employees for purposes of this Agreement, which information is collected and will be reported to the City in a manner acceptable to the City ("Remote Work Tracking"), as required in Section 7.

- (B) Minimum Expenditures. On or before the date that is two (2) years from the Effective Date, Grantee agrees to expend a minimum of \$1,350,000 towards the construction of building improvements to the Project Site and the purchase of machinery, equipment, furniture and fixtures to be located at the Project Site in order to accomplish the Project.
- (C) Minimum Number of New Employees. Within two (2) years from the Determination Date, Grantee agrees to employ a Number of New Employees at the Project Site equal to at least 120. Grantee agrees that the aggregate annual wages of the New Employees will be equal to at least \$11,290,000.
- (D) Relocation of Employment Positions from Elsewhere in Ohio. Grantee may not relocate a substantial number of employment positions from elsewhere in Ohio (i.e., outside the City) unless the Director of the Department of Community and Economic Development determines that the legislative authority of the county, township, or municipal corporation from which the employment positions would be relocated has been notified by Grantee of the relocation.
- (E) Employment Retention by Grantee.
- (1) During each year of the Employment Retention Period, Grantee agrees to maintain a monthly average of Aggregate Employees equal to or greater than the Baseline Aggregate Employee Level.
 - (2) During each of the first two (2) years of the City Tax Credit Term, Grantee agrees to maintain a monthly average of Grantee's City-Wide Employees equal to or greater than the Baseline City-Wide Employee Level.
 - (3) Beginning with the third (3rd) year of the City Tax Credit Term and continuing during each subsequent year of the Employment Retention Period, Grantee agrees to maintain an average Net Number of New Employees of at least ninety percent (90%) of the highest Net Number of New Employees reported by Grantee in calculating the City Income Tax Credit in any prior Tax Year during the City Tax Credit Term.

Grantee acknowledges and agrees that the obligations of Grantee under this Agreement may be affected by decisions of the Related Members, as the City's agreement to provide the City Income Tax Credit authorized herein is conditioned on maintenance of the existing employment within the City Boundaries by both Grantee and the Related Members.

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

- (3) City Referrals. The City Representative shall, within thirty (30) days after receiving such notification from Grantee, submit in writing the following: (a) the positions for which the City intends to make referrals; (b) the names and qualifications of referred applicants for each position available; and (c) the date when these applicants will be available for interview. For positions requiring customized training, however, such information may be submitted to Grantee up to thirty (30) days prior to the date that such positions are to be filled.
- (4) Interviews. Grantee agrees to interview those applicants who are referred by the City Representative and shall consider for employment those applicants Grantee finds to be qualified for an available position. If (a) the City Representative informs Grantee that it does not intend to make referrals for a position, (b) the City Representative fails to refer applicants who are available for interview for a position in accordance with this subsection or (c) the applicants referred for a position are deemed not qualified by Grantee, then Grantee may hire individuals from other sources for such position, without any further obligations or restrictions hereunder as to such position.
- (5) Subsequent Positions. During the three (3) year period following the date upon which this Agreement becomes effective, if Grantee needs to fill a vacant employment position (either from attrition or an increase in employment), Grantee agrees to notify the City Representative for an additional referral of applicants. Grantee, however, is under no obligation to postpone the hiring of a new employee pending receipt of referrals from the City Representative. If the position is still vacant at the time referrals are received from the City Representative, Grantee shall interview those applicants who are referred by the City Representative and shall consider for employment those applicants Grantee finds to be qualified for an available position.
- (6) Continuation of Referral Procedure. If Grantee and the City agree that this referral process has been mutually beneficial, the parties shall continue the process after the three (3) year period.

4. CITY INCOME TAX CREDIT.

- (A) Credit Requirements. Subject to the terms and conditions of this Agreement, for each Tax Year during the City Tax Credit Term in which Grantee has claimed the City Income Tax Credit on an income tax return filed directly with the City with respect to its net profits and is otherwise in full compliance with all requirements under both CMC Chapter 311 and this Agreement, Grantee shall be allowed to apply the City Income Tax Credit stated in this Section against the tax imposed on Grantee's net profits under CMC Chapter 311. The City Income Tax Credit shall be applied in accordance with any applicable rules and regulations (consistent with this Agreement) that may be adopted by the Board of Review (as defined in CMC Section 311-9-B1).
- (B) Amount of Credit. The amount of the City Income Tax Credit shall be forty percent (40%) of any New Income Tax Revenue in a given Tax Year. The City Income Tax Credit shall be applied against net profits tax due to the City (pursuant to CMC Chapter 311) from Grantee for such Tax Year. The City Income Tax Credit shall be allowed only after the allowance of all other credits and deductions under CMC Chapter 311. If the City Income Tax Credit exceeds Grantee's tax liability for such Tax Year, the City Income Tax Credit shall be fully refundable.
- (C) Related Members. Grantee acknowledges and agrees that the City Income Tax Credit calculated under this Agreement will be reduced to the extent that reductions in the number of Aggregate Employees of both Grantee and the Related Members affect the calculation of Net Number of New Employees.

5. COVENANT AS TO OUTSTANDING LIABILITIES; INSPECTION OF RECORDS; FALSE STATEMENTS. In accordance with ORC Section 9.66, (A) Grantee affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio (the "State") or to a political subdivision of the State; (2) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (3) any other moneys to the State, a State agency or a political

subdivision of the State that are past due, regardless of whether the amounts owed are being contested in a court of law or not; (B) Grantee authorizes the City and/or the State to inspect the personal financial statements of Grantee, including tax records and other similar information not ordinarily open to public inspection; and (C) Grantee authorizes the Ohio Environmental Protection Agency and the Ohio Department of Taxation to release information to the City and or other State departments in connection with the above statements. As provided by statute, a knowingly false statement under this Section may be prosecuted as a first-degree misdemeanor under ORC Section 2921.13, may render Grantee ineligible for any future economic development assistance from the State or any political subdivision of the State and will result in the City requiring Grantee's repayment of any assistance provided by the City in connection with the Project.

6. TERMINATION; REIMBURSEMENT FOR DEFAULT.

- (A) Suspension or Termination of the City Income Tax Credit. Subject to the provisions of subsections (B) and (C) below, if the City provides Grantee with written notice of an event of default under this Agreement, and such default is not cured to the City's satisfaction within thirty (30) days of such notice, the City shall suspend or terminate the City Income Tax Credit hereunder and may, in the City's sole discretion, take such other measures as may be lawful (including suing for specific performance). Except as provided in subsections (B) or (C) below, such suspension or termination shall only affect City Income Tax Credits otherwise allowable after the date of suspension or termination.
- (B) Grantee's Failure to Comply with Job Creation and Retention Obligations. If the City provides Grantee with written notice of an event of default under Section 3(C) or 3(E), and such default is not cured to the City's satisfaction within thirty (30) days of such notice, the City may, in its sole discretion, require Grantee to pay to the City all or a portion of the City Income Tax Credits previously claimed under this Agreement. For the avoidance of doubt, the City shall have the ability to exercise its rights under this Section with respect to each event of default under Section 3(C) or 3(E) (i.e. in the event that Grantee defaults under Section 3(C) or 3(E) in multiple Tax Years, the City may require Grantee to pay to the City all or a portion of the City Income Tax Credits previously claimed and not repaid under this Agreement after each event of default).
- (C) Grantee's Failure to Comply with Outstanding Liability Obligations. If the City provides Grantee with written notice of an event of default under Section 5, the City may, after giving Grantee an opportunity to explain such default, require Grantee to pay to the City all or any portion of the City Income Tax Credits previously claimed under this Agreement. For the avoidance of doubt, the City shall have the ability to exercise its rights under this Section with respect to each event of default under Section 5 (i.e. in the event that Grantee defaults under Section 5 in multiple Tax Years, the City may require Grantee to pay to the City all or a portion of the City Income Tax Credits previously claimed and not repaid under this Agreement after each event of default).
- (D) Reimbursement. Grantee hereby agrees (i) to make any payments required by the City under this Section within thirty (30) days of written demand by the City and (ii) in the event that the City refunds any Income Tax Revenue in a subsequent Tax Year for which a City Income Tax Credit was previously granted pursuant to this Agreement (the "Refund Amount"), then no later than thirty (30) days following Grantee's receipt of written notice from the City (the "City's Notice"), Grantee will either (a) pay an amount equal to the Refund Amount to the City, as detailed in the City's Notice or (b) deliver written notice to the City that Grantee will reduce its future City Income Tax Credits by the Refund Amount, such reduction to begin with the first City Income Tax Credit Grantee is eligible to receive pursuant to this Agreement following Grantee's receipt of the City's Notice. In the event that Grantee fails to make a timely election pursuant to the foregoing sentence, then the City may, in its sole and absolute discretion, reduce the amount of any future City Income Tax Credits by the Refund Amount, charge interest on the Refund Amount, terminate this Agreement, and/or take any and all other actions available to the City pursuant to this Agreement and applicable law. Amounts due and not paid when due shall bear interest at the rate specified in ORC Section 1343.03(A) (as such rate is in effect on the date of

the applicable payment demand by the City). Grantee hereby expressly waives the statute of limitations period contained in CMC Chapter 311 with respect to any such demand and payment.

- (E) No City Income Tax Credit if Grantee not in Full Compliance. Notwithstanding anything to the contrary in this Agreement, Grantee shall not be allowed a City Income Tax Credit hereunder (including any credit carried forward from prior tax years) in any Tax Year in which Grantee is not in full compliance with all requirements of this Agreement.

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

8. SMALL BUSINESS ENTERPRISE PROGRAM AND EQUAL EMPLOYMENT OPPORTUNITY PROGRAM.

- (A) Small Business Enterprise Program Policy. The policy of the City is that a fair share of contracts be awarded to Small Business Enterprises (as such term is defined in CMC Section 323-1, "SBEs"). Pursuant to CMC Section 323-7, the City's annual goal for SBE participation shall be thirty percent (30%) of the City's total dollars spent for construction (as such term is defined in CMC Section 323-1), supplies (as such term is defined in CMC Section 323-1), services (as such term is defined in CMC Section 323-1) and professional services (as such term is defined in CMC Section 323-1). Accordingly, Grantee shall use its best efforts and take affirmative steps to achieve the City's goal of voluntarily meeting thirty percent (30%) SBE participation. A list of SBEs may be obtained from the City's Department of Economic Inclusion. Grantee may refer interested firms to the City's Department of Economic Inclusion for review and possible certification as an SBE. Grantee shall comply with the provisions of CMC Chapter 323, including without limitation taking at least the following affirmative steps:
- (1) Including qualified SBEs on solicitation lists.
 - (2) Assuring that SBEs are solicited whenever they are potential sources. Grantee must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials, or to bid on construction contracts, as applicable.

- (3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
 - (4) If any subcontracts are to be let, Grantee shall require the prime contractor (if different from Grantee) to take the above affirmative steps.
 - (5) Prior to the commencement of work under any subcontracts, Grantee shall provide to the City a list of such subcontractors, including information as to the dollar amount of the subcontracts and such other information as may be requested by the City. Grantee shall update the report monthly.
 - (6) Grantee shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by submitting such information as may be requested from time to time by the City.
 - (B) Small Business Enterprise Program Remedies. Failure of Grantee or its contractors and subcontractors to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach SBE participation as set out in CMC Chapter 323 may be construed by the City as failure of Grantee to use its best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this Section. The provisions of CMC Section 323-99 are hereby incorporated by reference into this Agreement.
 - (C) Equal Employment Opportunity Program. This Agreement is subject to and hereby incorporates the provisions of the Equal Employment Opportunity Program set forth in CMC Chapter 325 (including, without limitation, CMC Section 325-9).
 - (D) Further Information. Details concerning both the SBE Program and the Equal Employment Opportunity Program can be obtained from the City's Department of Economic Inclusion, Two Centennial Plaza, 805 Central Avenue, Suite 222, Cincinnati, Ohio 45202, (513)352-3144.
9. RECORDS, ACCESS AND MAINTENANCE. Throughout the period required by CMC Section 311-81, Grantee agrees to establish and maintain such records as are necessary to document compliance with this Agreement (including but not limited to, financial reports, payroll records, documentation with respect to any Grantee-paid benefits claimed as part of a Minimum Qualifying Wage, intake and participant information and all other relevant information). For the three (3) year period following the end of the Employment Retention Period, Grantee agrees to maintain records of the amounts of City Income Tax Credits claimed and allowed. The parties further agree that records with respect to any audit disallowances, litigation or dispute between the City and Grantee shall be maintained for the time needed for the resolution of said disallowance, litigation or dispute, and that in the event of early termination of this Agreement (or if for any other reason the City shall require a review of the records related to the Project), Grantee shall, at its own cost and expense, segregate all such records related to the Project and this Agreement (or copies thereof) from its other records of operation.
 10. AUDITS AND INSPECTIONS. At any time during normal business hours upon written notice and as often as the City may deem necessary, Grantee shall make available to the City and to appropriate State agencies or officials all records of Grantee and the Related Members with respect to matters covered by this Agreement including, but not limited to, records of personnel and conditions of employment, and shall permit the City to audit, examine and make excerpts or transcripts from such records.
 11. FORBEARANCE NOT A WAIVER. No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the City of any of its rights hereunder.
 12. COMPLIANCE WITH IMMIGRATION AND NATIONALITY ACT. In the performance of its obligations under this Agreement, Grantee agrees to comply with the provisions of the Immigration and Nationality Act codified at 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2). Any noncompliance with such provisions shall be solely determined by either the federal agencies authorized to enforce the Immigration and Nationality

Act or the U.S. Attorney General, in accordance with Executive Order 12989 of the U.S. President dated February 13, 1996, and as amended by Executive Order 13465 of the U.S. President dated June 6, 2008.

13. INDEMNIFICATION. Grantee shall indemnify, defend and save the City, its agents and employees harmless from and against any and all losses, claims, damages, liabilities, costs or expenses (including reasonable fees, disbursements, settlement costs and other charges of counsel) imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other documents related to this Agreement or any undertaking or proceeding related to any of the transactions contemplated hereby or thereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs and the fees and expenses of counsel, except that Grantee shall not have any obligation under this Section to the extent that such losses, claims, damages, liabilities, costs or expenses do not result from an act or omission by Grantee. To the extent that the undertaking to indemnify, pay, and hold harmless set forth in this Section may be unenforceable because it violates any law or public policy, Grantee shall pay the maximum portion which it is permitted to pay under applicable law to the City in satisfaction of indemnified matters under this Section. To the extent permitted by applicable law, neither Grantee nor the City shall assert, and each of Grantee and the City hereby waives, any claim against either Grantee or the City, as applicable, on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other documents related to this Agreement or any undertaking or transaction contemplated hereby. All amounts due under this Section shall be payable upon demand. The foregoing indemnity shall survive the termination of this Agreement.
14. CITY IDENTIFICATION IN MARKETING MATERIALS. Grantee shall acknowledge the financial support of the City with respect to this Agreement in all printed materials (including but not limited to informational releases, pamphlets and brochures, construction signs, project and identification signage and stationary) and any publicity (such as but not limited to materials appearing on the Internet, television, cable television, radio or in the press or any other printed media). In identifying the City as a funding source, Grantee shall use either the phrase "Funded by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City. Grantee's obligations under this Section shall be in effect throughout the term of this Agreement.
15. CONFLICT OF INTEREST. Grantee agrees that no officer, employee or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of this Agreement, nor any immediate family member, close business associate or organization which is about to employ any such person, shall have any personal financial interest, direct or indirect, in Grantee or in this Agreement and Grantee shall take appropriate steps to assure compliance.
16. MISCELLANEOUS.
 - (A) Relocation of Project Site Within the City. During the term of the Tax Credit, Grantee may change the location of the Project Site to another location, but only within the City of Cincinnati's corporate boundaries.
 - (B) Governing Law. This Agreement shall be governed by the laws of the State as to all matters, including but not limited to matters of validity, construction, effect and performance.
 - (C) Forum and Venue. All actions regarding this Agreement shall be brought in a court of competent subject matter jurisdiction in Hamilton County, Ohio.
 - (D) Entire Document. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other

discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

- (E) Severability. If any provisions of this Agreement are declared by final non-appealable court order to be unlawful or invalid under applicable law, then such order shall not invalidate the remainder of this Agreement not found to be unlawful or invalid and shall not create any liability to the City resulting from the unlawfulness or invalidity of such provisions. Any provision so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such provision to the fullest extent possible while remaining lawful and valid.
- (F) Assignment. Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or subcontracted by Grantee without the prior express written consent of the City.
- (G) Successor in Interest. Each and all of Grantee's obligations under this Agreement shall extend to and bind not only Grantee, but its successors and assigns. Only in the case of assignment consented to by the City (as provided in subsection (F) above), Grantee's benefits hereunder shall inure to the benefit of any approved assignee.
- (H) Certification as to Non-Debarment. Grantee represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In completing the Project, Grantee shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If Grantee or any of its principals becomes debarred by any federal, state, or local government agency during the term of this Agreement, Grantee shall be considered in default under this Agreement.
- (I) Notices. All notices, consents, demands, requests and other communications given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by mail, registered or certified, to the addresses set forth hereunder, or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

To the City:

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

with a copy to:

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

To Grantee:

Prospiant, Inc.
3556 Lake Shore Road
Buffalo, NY 14219
Attention: Jeffrey Watorek, Vice President & Treasurer

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

- (J) Wage Enforcement. This Agreement is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any person who has an agreement with the City, or a contractor or subcontractor of that person, shall report all complaints or adverse determinations of Wage Theft and Payroll Fraud (as defined in Chapter 326 of the Cincinnati Municipal Code) against the person, contractor or subcontractors to the Department of Economic Inclusion within 30 days of notification of the complaint or adverse determination. Under the Wage Enforcement provisions, the City shall have the authority, under certain circumstances, to terminate this Agreement or reduce the incentives or subsidies to be provided under this Agreement and to seek other remedies.
 - (K) Legal Requirements. In completing and operating the Project, and in undertaking the matters contemplated by this Agreement, Grantee shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati.
 - (L) 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.
17. FEES. Grantee shall pay to the City (i) within 10 days following the Effective Date, an initial administrative fee in connection with the City's application, underwriting, processing and documentation costs equal to \$3,000.00, and (ii) concurrently with the submission of each required annual progress report under Section 7, an annual monitoring, review and administration fee of \$2,000.00.

[Remainder of page intentionally left blank]

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

PROSPIANT, INC.,
an Ohio corporation

By: _____

Printed Name: _____

Title: _____

Date: _____, 2025

As authorized by corporate resolution dated _____, 20__

CITY OF CINCINNATI,
an Ohio municipal corporation

By: _____

Sheryl M.M. Long, City Manager

Date: _____, 2025

Approved as to Form:

Assistant City Solicitor

Certification of Funds:

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____

Steve Webb, City Finance Director